CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1936 7

No. ~~713~~ 5

CHESTER C. DODGE, CATHERINE L. BAIRD, AZILE B. REYNOLDS, ET AL., APPELLANTS,

vs.

BOARD OF EDUCATION OF THE CITY OF CHICAGO ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS

FILED FEBRUARY 5, 1937.

BLANK

PAGE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 713

CHESTER C. DODGE, CATHERINE L. BAIRD, AZILE B. REYNOLDS, ET AL., APPELLANTS,

vs.

BOARD OF EDUCATION OF THE CITY OF CHICAGO ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS

INDEX.

	Page
Proceedings in Supreme Court of Illinois	A
Caption	A
Abstract of record from Superior Court of Cook County	A
Index to abstract of record	B-1
Order of submission	265
Opinion, Stone, J.	265
Judgment	273
Order denying rehearing	274
Petition for appeal and assignments of error	274
Order allowing appeal	276
Bond on appeal (omitted in printing)	277
Citation and service (omitted in printing)	277
Stipulation as to transcript of record	277
Clerk's certificate (omitted in printing)	279
Certificate of transmittal (omitted in printing)	279
Statement of points to be relied upon and designation as to printing record	279

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 11, 1937.

—8830-C

BLANK

PAGE

A

IN SUPREME COURT OF ILLINOIS

Be it remembered, that to-wit, on the 21st day of April, A. D. 1936, the same being one of the days in vacation before the June term of Court aforesaid, complete transcript of proceedings had in the Superior Court of Cook County was filed by Chester C. Dodge et al., appellants, in the office of the Clerk of the Supreme Court of Illinois in case entitled: No. 23661, Chester C. Dodge et al., Appellants, vs. Board of Education of the City of Chicago et al., Appellees, Appeal Superior Court Cook, an Abstract of the Record being in the words and figures as follows, to-wit:

BLANK

PAGE

INDEX.

PAGE

Answer of defendant Board of Education to Complaint 110

Appeal Bond 177

Appearance of Board of Education, et al. 90

Appearance of Edward J. Kelly, Mayor, et al. 90

Certificate of Clerk to Transcript of Record 263

Certificate of Trial Judge to Report of Proceedings 262

Complaint of Plaintiffs 1

For exhibits attached to Complaint see "Exhibits."

Decision of Trial Judge 259

Decree (Final) 173

Evidence (see Index, pages v to xx)

Exhibits (Attached to Complaint):

"A"—Original Miller Act, Effective May 19, 1926 49

"B"—Recommendation of Superintendent, April 8, 1925. Compulsory Retirement of Employees 51

"C-1"—Recommendation of Superintendent, November 25, 1925—"Emeritus Service" 54

PAGE

Exhibits (Attached to Complaint):

"C-2"—Report of Joint Committee, in re: Amendment to Rules—Emeritus Service, December 9, 1925 56

"D"—Opinion of Appellate Court in Armstrong v. City of Chicago, Feb. 28, 1928 57

"E"—Amendment of 1927 to the Miller Act, approved June 24, 1927 62

"F"—Report of Superintendent in re: Proposed Amendment to Retirement Law, March 9, 1927 64

"G"—Approved recommendation for Employment of Actuary in re: Proposed Amendment of Miller Act, May 11, 1927 68

"H"—Report of Actuary on Amendment to Retirement Law, May 25, 1927 68

"I"—Miller Act as Amended in 1929 71

"J"—Amendment to Retirement Act, Effective July 12, 1935 72

"K"—Recommendation of Superintendent, January 12, 1927, to Retire 14 Persons, including Plaintiff Dodge 73

"L"—Recommendation of Superintendent, January 23, 1929, to Retire 4 certain persons, from February, 1929, including Plaintiff Armstrong 75

"M"—Recommendation of Superintendent in re: Voluntary Retirement of Teachers, Effective June 28, 1935, naming 80 persons 75

"N"—Recommendation of Superintendent, in re: Voluntary Retirement of Persons named in "M" including plaintiff Burns, Referred to General Committee 76

PAGE

Exhibits (Attached to Complaint):

"O-1"—Recommendation of Superintendent to Retire 92 persons under Law effective June 28, 1935; including plaintiffs Paterson and Reynolds 77

"O-2"—Recommendation of Superintendent in re: Voluntary Retirement of Persons named in "O-1", Referred to General Committee 78

"P"—Recommendation of Superintendent, June 26, 1935, in re: Applications for Voluntary Retirement, Effective in June, 1935 79

"Q"—Request for Voluntary Retirement, from Superintendent, in re: Voluntary retirements, June 26, 1935, Referred to General Committee 79

"R"—Adoption of School Budget, 1935—Report of Special Budget Committee 80

"S"—Order, Demand and Direction—Tax Levy for 1935—Adopted (Resolution) 82

"T"—Payroll Sub-Warrant, dated September 20, 1935, for $25.00, to James E. Armstrong 83

"U"—Order for Next Annuity Payment (form) 85

"V"—Return Envelope to Board of Education 86

"W"—Receipt from Chester C. Dodge for $25.00, dated September 28, 1935, to apply on account of $75.00 due 87

"X"—Payroll Sub-Warrant, dated October 4, 1935, for $25.00, to James E. Armstrong 88

PAGE

Miscellaneous Orders:

Order that answer of defendants to original Complaint stand as answer to Intervening Complaints of Grace L. Ackley, et al., and of Rose Conley, et al. 173

Order approving Report of Proceedings at the Trial 178

Order approving Appeal Bond 177

Order denying motion of plaintiff to strike answer of defendants and granting leave to plaintiffs to reply 150

Order fixing time to file report of proceedings had at trial 175

Order granting leave to Grace L. Ackley, et al., to file Intervening Petition 90

Order granting leave to Rose Conley, et al., to file Intervening Petition 164

Order setting case for hearing 90

Order granting leave to plaintiffs to file written motion, instanter, to strike answer of Board of Education 146

Motion of City of Chicago et al. to Dismiss 109

Motion of plaintiffs to strike Answer to Complaint.. 146

Notices:

Notice of Appeal 175

Notice of Appearance filed by Board of Education, et al. 178

Notice of motion of Grace L. Ackley, et al., for leave ~~to file~~ Intervening Petition 90

Notice of motion to set case for hearing 90

Notice of motion of plaintiffs for leave to file written motion to strike Answer of Board of Education 146

PAGE

Petition and Intervening Complaint of Grace L. Ackley, et al. 91
Petition and Intervening Complaint of Rose Conley, et al. 164
Placita 1
Praecipe for Record and Proof of Service of copy thereof 177
Prayer for Relief 40-48
Proof of Service of Notice of Appeal 176

Reply of Plaintiffs to Answer of Board of Education 150
Report of Proceedings at the Trial 178

Stipulation to Incorporate Original Exhibits in Report of Proceedings 263
Stipulation to incorporate original Report of Proceedings in transcript of record 262
Summons and return 89

THE EVIDENCE.

Plaintiffs' Evidence:

Armstrong, James E.—
Direct examination 186
Cross examination 186

Bates, Alfred R.—
Direct examination 189

Dodge, Chester C.—
Direct examination 186

Keen, Henry Fremont—
Direct examination 184

Reynolds, Azile B.—
Direct examination 184

PAGE

EXHIBITS, (PLAINTIFF'S)

PROCEEDINGS OF BOARD OF EDUCATION.

Exhibits:

1—July 9, 1930 (27217) Recommendation of Superintendent to retire 6 persons, including Alma Beach 206

1-a—July 9, 1930 (27217) adopted 207

1-b—July 23, 1930 (27338) Recommendation of Superintendent to retire 6 persons, including Katherine C. Baker 207

1-c—July 23, 1930, Barbara C. Leu, et al. 208

1-d—July 23, 1930 (27338) adopted 208

1-e—August 5, 1930 (27530) Recommendation of Superintendent to retire 3 persons, including Catherine G. Ford 208

1-f—August 5, 1930 (27530) adopted 208

1-g—August 29, 1930 (M-27589) Recommendation of Superintendent to retire 9 persons, including Louise Alvord, adopted.. 209

1-h—September 10, 1930 (27741) Recommendation of Superintendent to retire 2 persons, including Alice M. Dummer. And (27742) to retire 3 persons, including Elinor K. Boothroyd 209

1-i—September 10, 1930, Ida M. Peaslee, et al. 210

1-j—September 10, 1930 (27741 and 27742) adopted 210

1-k—September 24, 1930 (27955) Recommendation of Superintendent to retire 2 persons, including Viola M. Shaw. Also (27956) to retire Elizabeth W. Murphy.. 210

PAGE

Exhibits:

1-l—September 24, 1930 (27955 and 27956) adopted 210

1-m—October 8, 1930 (28099) Recommendation of Superintendent to retire 5 persons, including Emma A. W. Allen 211

1-n—October 8, 1930, Elizabeth M. Connelly, et al. Also (28100) Recommendation of Superintendent to amend No. 24588 as to date of retirement of Minnie T. Alexander, et al. 211

1-o—October 8, 1930 (28099 and 28100) adopted 212

1-p—October 22, 1930 (28244) Recommendation of Superintendent to retire person named therein 213

1-q—October 22, 1930 (28244) adopted 213

1-r—November 12, 1930 (28380) Recommendation of Superintendent to retire 3 persons, including Chattie E. Field 213

1-s—November 12, 1930 (28380) adopted 213

1-t—December 10, 1930 (28697) Recommendation of Superintendent to retire 3 persons, including Jane B. Baldwin 214

1-u—December 10, 1930 (28697) adopted 214

1-v—December 26, 1930 (28833) Recommendation of Superintendent to retire 6 persons, including Millicent B. Bingham, et al. 214

1-w—December 26, 1930 (28833) adopted 215

1-x—January 14, 1931 (28935) Recommendation of Superintendent to retire Sarah Eva Kendall, also (28936) to retire 4 persons, including Henrietta A. Crowley..... 215

PAGE

Exhibits:

1-y—January 14, 1931 (28935 and 28936) adopted 215

1-z—January 28, 1931 (29019) Recommendation of Superintendent to retire 3 persons, including Kate Keith 215

1-aa—January 28, 1931 (29019) adopted 216

1-bb—February 11, 1931 (29118) Recommendation of Superintendent to retire 6 persons, including Mary E. Babcock 216

1-cc—February 11, 1931 (29118) adopted 216

1-dd—March 11, 1931 (29312) Recommendation of Superintendent to retire 3 persons, including Lizzie V. Borthwick 216

1-ee—March 11, 1931, Harriet W. Winter 217

1-ff—March 11, 1931 (29312) adopted 217

1-gg—April 8, 1931 (29485) Recommendation of Superintendent to retire Nellie M. Cochran 217

1-hh—April 8, 1931 (29485) adopted 217

1-ii—April 22, 1931 (29603) Recommendation of Superintendent to retire 2 persons, including Edith B. Flagler 217

1-jj—April 22, 1931 (29603) adopted 218

1-kk—May 13, 1931 (29714) Recommendation of Superintendent to retire 3 persons, including Mary T. Flynn 218

1-ll—May 13, 1931 (29714) adopted 218

2—July 8, 1931 (30110) Recommendation of Superintendent to retire 8 persons, including Minnie A. Dietz 219

2-a—July 8, 1931 (30110) adopted 219

PAGE

Exhibits:

2-b—August 26, 1931 (30306) Recommendation of Superintendent to retire 4 persons, including Thomas H. Furlong 219

2-c—August 26, 1931 (30306) adopted 220

2-d—September 9, 1931 (30439) Recommendation of Superintendent to retire 7 persons, including Blanche D. Abbott 220

2-e—September 9, 1931 (G-30442) Recommendation of Superintendent to retire 3 persons, including Louise H. Kurz, Reports (30439 and G-30442) adopted 220

2-f—September 23, 1931 (30537) Recommendation of Superintendent to retire Mary A. Chappel 221

2-g—September 23, 1931 (30537) adopted 221

2-h—October 14, 1931 (30664) Recommendation of Superintendent to retire 2 persons, including Hattie C. Maxwell 221

2-i—October 14, 1931 (30664) adopted 221

2-j—October 28, 1931 (30785) Recommendation of Superintendent to retire 2 persons, including Mathilde Jaeger 221

2-k—October 28, 1931 (30785) adopted 222

2-l—November 12, 1931 (30976) Recommendation of Superintendent to retire 3 persons, including Grace P. Bixel 222

2-m—November 12, 1931 (30976) adoped 222

2-n—November 25, 1931 (31047) Recommendation of Superintendent to retire Bertha Fontayne 222

2-o—November 25, 1931 (31047) adopted 223

PAGE

Exhibits:

2-p—December 23, 1931 (31242) Recommendation of Superintendent to retire 6 persons, including Amanda Isensee 223

2-q—December 23, 1931 (31242) adopted 223

2-r—January 13, 1932 (A-31316) Recommendation of Superintendent to retire Katharine B. Fonvielle, adopted 223

2-s—January 27, 1932 (31384) Recommendation of Superintendent to retire 7 persons, including Jennie S. Allison 224

2-t—January 27, 1932 (31384) adopted 224

2-u—February 10, 1932 (31453) Recommendation of Superintendent to retire 3 persons, including Nellie G. Hooker 224

2-v—February 10, 1932 (31453) adopted 225

2-w—February 24, 1932 (31501) Recommendation of Superintendent to retire 2 persons, including Sarah E. Gay 225

2-x—February 24, 1932, John A. Peters 225

2-y—February 24, 1932 (31501) adopted 225

2-z—March 23, 1932 (31592) Recommendation of Superintendent to retire 2 persons, including Sue Gallagher 225

2-aa—March 23, 1932 (31592) adopted 226

2-bb—April 27, 1932 (31695) Recommendation of Superintendent to retire 3 persons, including Sarah Baynes 226

2-cc—April 27, 1932 (31695) adopted 226

2-dd—May 11, 1932 (31742) Recommendation of Superintendent to retire 2 persons, including Anna M. Cody 226

PAGE

Exhibits:

2-ee—May 11, 1932 (31742) adopted 227

2-ff—May 25, 1932 (31771) Recommendation of Superintendent to retire 2 persons, including Marion L. Jones 227

2-gg—May 25, 1932 (31771) adopted 227

3—August 1, 1932 (31939) Recommendation of Superintendent to retire 11 persons, including Ella E. Earle 227

3-a—August 1, 1932 (31939) adopted 228

3-b—August 10, 1932 (31977) Recommendation of Superintendent to retire 4 persons 228

3-c—August 10, 1932, Rose A. Beatty and 3 others, Report (31977) adopted 228

3-d—September 7, 1932 (32088) Recommendation of Superintendent to retire 11 persons, including Carrie E. Armstrong, Adopted 229

3-e—September 14, 1932 (32103) Recommendation of Superintendent to retire 3 persons, including Bridget M. Dalton 229

3-f—September 14, 1932 (32103) adopted 230

3-g—September 28, 1932 (32147) Recommendation of Superintendent to retire 2 persons, including Mary T. Adams 230

3-h—September 28, 1932 and

3-i—September 28, 1932 (32147) adopted 230

3-j—October 13, 1932 (32183) Recommendation of Superintendent to retire Marie L. Mann. Also (32184) to retire 3 persons, including Elizabeth A. Keating 230

3-k—October 13, 1932 (32183 and 32184) adopted 231

PAGE

Exhibits:

3-l—October 26, 1932 (32231) Recommendation of Superintendent to retire 4 persons, including Elizabeth C. Fife 231

3-m—October 26, 1932 and

3-n—October 26, 1932 (32231) adopted 231

3-o—November 9, 1932 (32264) Recommendation of Superintendent to retire 9 persons, including Ida M. Brown 232

3-p—November 9, 1932 (32264) adopted 232

3-q—November 23, 1932 (32312) Recommendation of Superintendent to retire Erin C. Miller 232

3-r—November 23, 1932 and

3-s—November 23, 1932 (32312) adopted 233

3-t—December 14, 1932 (32384) Recommendation of Superintendent to retire named person. Also (32385) to retire 15 persons named for retirement, including Clara Bell Allen 233

3-u—December 14, 1932, Sue B. Keller, et al. 233

3-v—December 14, 1932 (32384 and 32385) adopted 234

3-w—December 28, 1932 (32458) Recommendation of Superintendent to retire 7 persons, including Anna C. Bachman 234

3-x—December 28, 1932 and

3-y—December 28, 1932 (32458) adopted 234

3-z—January 13, 1933 (B-32509) Recommendation of Superintendent to retire 9 persons, including Mary G. Hudson 235

PAGE

Exhibits:

3-aa—January 13, 1933 (F-32509) Recommendation of Superintendent to retire person named. Reports (B-32509 and F-32509) adopted 235

3-bb—January 25, 1933 (32536) Recommendation of Superintendent to retire person named. Also (32538) Recommendation of Superintendent to retire 7 persons, including Clara M. Brown 235

3-cc—January 25, 1933 (32536 and 32538) adopted 236

3-dd—February 8, 1933 (32603) Recommendation of Superintendent to retire 3 persons, including Mary A. Kenney—adopted 236

3-ee—February 23, 1933 (32635) Recommendation of Superintendent to retire 2 persons, including Margaret E. Reed 237

3-ff—February 23, 1933 (D-32636) Recommendation of Superintendent to retire person named. Reports (32635 and D-32636) adopted 237

3-gg—March 13, 1933 (32663) Recommendation of Superintendent to retire 4 persons, including Nettie M. Barry 237

3-hh—March 13, 1933 (32663) adopted 238

3-ii—March 22, 1933 (32682) Recommendation of Superintendent to retire 3 persons, including Louise A. Lyman 238

3-jj—March 22, 1933 (32682) adopted 238

3-kk—April 12, 1933 (32717) Recommendation of Superintendent to retire 3 persons, including Elizabeth D. Fox 238

PAGE

Exhibits:

3-ll—April 12, 1933 (32717) adopted 239

3-mm—April 26, 1933 (32783) Recommendation of Superintendent to retire 6 persons, including Byrnina B. Beardsley 239

3-nn—April 26, 1933 (32783) adopted 239

3-oo—May 10, 1933 (32809) Recommendation of Superintendent to retire 4 persons, including Auguste J. Forster 239

3-pp—May 10, 1933 (32809) adopted 240

3-qq—May 24, 1933 (32846) Recommendation of Superintendent to retire 2 persons, including Annie E. Daley 240

3-rr—May 24, 1933 and

3-ss—May 24, 1933 (32846) adopted 240

3-tt—June 14, 1933 (32891) Recommendation of Superintendent to retire 5 persons, including Anna M. Andrus 240

3-uu—June 14, 1933 (32891) adopted 241

3-vv—June 28, 1933 (32943) Recommendation of Superintendent to retire 9 persons, including Sarah McGill, adopted 241

4—August 9, 1933 (33012) Recommendation of Superintendent to retire 10 persons, including Edith M. Brogan 242

4-a—August 9, 1933 (B-33017) Recommendation of Superintendent to retire 8 persons, including Eugenie F. Guth 242

4-b—August 9, 1933, Allen M. Otwell, et al. Reports (33012 and B-33017) adopted 243

PAGE

Exhibits:

4-c—August 23, 1933 (33056) Recommendation of Superintendent to retire 3 persons, including Alice L. Burns. (33057) Recommendation of Superintendent that retirement of Mary I. McKeown voted in B-33017 be rescinded. Reports (33056 and 33057) adopted 243

4-d—September 13, 1933 (33104) Recommendation of Superintendent to retire 18 persons, including Miriam E. Bicknell 244

4-e—September 13, 1933 (A-33106) Recommendation of Superintendent to retire 4 persons, including Nettie A. Chadwick 244

4-f—September 13, 1933 (33104 and A-33106) adopted 245

4-g—September 27, 1933 (33126) (33127) (33128) Recommendations of Superintendent to retire 3 persons including Mary E. Smith (33126) 1 person each (33127 and 33128); also that retirement of Jennie M. Dignum (33104) be fixed at 9/25/33 245

4-h—September 27, 1933 (33126, 33127 and 33128) adopted 245

4-i—October 11, 1933 (33158) Recommendation of Superintendent to retire 6 persons, including Sarah E. Ausemus 246

4-j—October 11, 1933, Lillian Farnam, et al. 246

4-k—October 11, 1933 (33158) adopted 246

4-l—October 25, 1933 (33184) Recommendation of Superintendent to retire 4 persons, including Charlotte Dutton 246

4-m—October 25, 1933 (33184) adopted 247

PAGE

Exhibits:

4-n—November 8, 1933 (33219) Recommendation of Superintendent to retire 2 persons, including Minnie M. Batterton 247

4-o—November 8, 1933 and

4-p—November 8, 1933 (33219) adopted 247

4-q—November 22, 1933 (33275) Recommendation of Superintendent to retire 6 persons, including Elizabeth M. Goodbody.. 247

4-r—November 22, 1933, Mary I. McKeown, et al. 248

4-s—November 22, 1933 (33275) adopted 248

4-t—December 13, 1933 and

4-u—December 13, 1933 (33325) Recommendation of Superintendent to retire 15 persons, including Margaret Baker 248

4-v—December 13, 1933 (33325) adopted 249

4-w—December 27, 1933 (33375) Recommendation of Superintendent to retire 3 persons, including William Seabrook 249

4-x—December 27, 1933 and

4-y—December 27, 1933 (33375) adopted 249

4-z—January 24, 1934 (33440) Recommendation of Superintendent to retire 13 persons including Anna S. Bishop 250

4-aa—January 24, 1934, Alice B. Ely, et al. 250

4-bb—January 24, 1934 (33440) adopted 250

4-cc—February 21, 1934 (33469) Recommendation of Superintendent to retire Elizabeth S. Bohman, and (33470) Recommendation of Superintendent to retire 5 persons, including Annie E. Arnold 250

PAGE

Exhibits:

4-dd—February 21, 1934 (33469 and 33470) adopted 251

4-ee—February 28, 1934 (33518) Recommendation of Superintendent to retire 4 persons, including Mary L. Hurley, adopted 251

4-ff—March 14, 1934 (33575) Recommendation of Superintendent to retire 6 persons, including Ida A. Bamberger 252

4-gg—March 14, 1934 (33575) adopted 252

4-hh—April 11, 1934 (J-33640) Recommendation of Superintendent to retire 3 persons, including Nancy G. Gladish 252

4-ii—April 11, 1934 and

4-jj—April 11, 1934 (J-33640) adopted 252

4-kk—April 25, 1934 (33690) Recommendation of Superintendent to retire 3 persons, including Zella C. Baird 253

4-ll—April 25, 1934 (33690) adopted 253

4-mm—May 9, 1934 (33739) Recommendation of Superintendent to retire person named 253

4-nn—May 9, 1934 (33739) adopted 253

4-oo—May 23, 1934 (33790) Recommendation of Superintendent to retire Elizabeth R. Rawson 254

4-pp—May 23, 1934 (33790) adopted 254

4-qq—June 27, 1934 (33950) Recommendation of Superintendent to retire 13 persons, including Almeda Bedwell 254

4-rr—June 27, 1934 (33950) adopted 255

5—September 5, 1934 (34236) Recommendation of Superintendent to retire 28 persons, including Martha V. Bishop 193

PAGE

Exhibits:

5-a—September 5, 1934 (34236) adopted 195

5-b—September 12, 1934 (34278) Recommendation of Superintendent to retire 4 persons, including Emma E. Fuhrman 195

5-c—September 12, 1934 (34278) adopted 195

5-d—September 26, 1934 (34342) Recommendation of Superintendent to retire Lyman S. Mansell. And (34343) Recommendation of Superintendent to retire 4 persons, including Anna M. Johnston 195

5-e—September 26, 1934 (34342 and 34343) adopted 196

5-f—October 10, 1934 (34396) Recommendation of Superintendent to retire two persons, including Jennie L. Moore 196

5-g—October 10, 1934 (34396) adopted 196

5-h—November 1, 1934 (B-34442) Recommendation of Superintendent to retire Abigail Hanrahan. Recommendation of Superintendent (C-34442) to retire Katherine E. Ashelby 197

5-i—November 1, 1934 (B-34442 and C-34442) adopted 197

5-j—November 14, 1934 (34489) Recommendation of Superintendent to retire 5 persons, including Nora P. Grogan 197

5-k—November 14, 1934 and

5-l—November 14, 1934 (34489) adopted 198

5-m—November 28, 1934 (34531) Recommendation of Superintendent to retire 7 persons, including Flora V. Renaud, et al..... 198

5-n—November 28, 1934 (34531) adopted 198

PAGE

Exhibits:

5-o—December 12, 1934 and

5-p—December 12, 1934 (34593) Recommendation of Superintendent to retire 12 persons, including Jennie Lintuman 198

5-q—December 12, 1934 (34593) adopted 199

5-r—December 26, 1934 (34652) Recommendation of Superintendent to retire 3 persons, including Allison W. Augur 199

5-s—December 26, 1934 (34652) adopted 199

5-t—January 23, 1935 (34773) Recommendation of Superintendent to retire 13 persons, including Emma Badger 200

5-u—January 23, 1935 (34773) adopted 200

5-v—January 30, 1935 (34825) Recommendation of Superintendent to retire Mary Ellen Yohn 200

5-w—January 30, 1935 (34825) adopted 200

5-x—February 13, 1935 (34870) Recommendation of Superintendent to retire person therein named (34871) Recommendation of Superintendent to retire 7 persons, including Elizabeth B. Britt 201

5-y—February 13, 1935, Ida A. Hegner, et al. 201

5-z—February 13, 1935 (34870 and 34871) adopted 201

5-aa—February 27, 1935 (34929) Recommendation of Superintendent to retire 8 persons, including Alice L. Garthe 201

5-bb—February 27, 1935, Mary J. Saunders, et al.—Also correction in Board Report No. 34871 in re Ida A. Hegner 202

5-cc—February 27, 1935 (34929) adopted 202

PAGE

Exhibits:

5-dd—March 13, 1935 (34996) Recommendation of Superintendent to retire 8 persons, including Julia Herrick 202

5-ee—March 13, 1935 (34996) adopted 203

5-ff—April 3, 1935 (35044) Recommendation of Superintendent to retire 2 persons, including Kate Quarton. Also changing effective date of retirement of 3 persons, including Julia Herrick 203

5-gg—April 3, 1935 (35044) adopted 203

5-hh—April 24, 1935 (35095) Recommendation of Superintendent to retire 4 persons, including Catherine L. Baird 203

5-ii—April 24, 1935 (J-35101) Recommendation of Superintendent to retire 6 persons, including Anna Church 204

5-jj—April 24, 1935 (35095 and J-35101) adopted 204

5-kk—May 15, 1935 (35159) Recommendation of Superintendent to retire 2 persons, including Caroline M. Dean 204

5-ll—May 15, 1935 and

5-mm—May 15, 1935 (35159) adopted 205

IN THE

SUPREME COURT OF ILLINOIS

JUNE TERM, A. D. 1936

CHESTER C. DODGE, et al., (Plaintiffs) Appellants, vs. **BOARD OF EDUCATION OF THE CITY OF CHICAGO, a body politic and corporate, et al.,** (Defendants) Appellees.	Appeal from Superior Court, Cook County. Honorable Harry B. Miller, Judge Presiding.

Abstract of Record.

Rec. Page

1 Placita, Superior Court, March Term, 1936.

3 Verified Complaint filed October 9, 1935, by Chester C. Dodge, James E. Armstrong, Wallace H. Whigam, Genevieve Cook, Hiram B. Loomis, Frank L. Morse, Henry F. Keen, Archibald O. Coddington, Helen Toole;

Catherine L. Baird, Mary L. M. Corbett, George B. McClelland, Nellie C. Callahan, Caroline M. Dean, Lillian F. Dougherty, Laura Tierney, Nellie T. Woulfe;

Archibald Paterson, Azile B. Reynolds and Elmer E. Burns

on behalf of themselves and on behalf of other teachers, principals, etc., who retired or attempted to retire from active teaching in the public schools of Chicago before July 11, 1935, similarly situated to plaintiffs and who may choose to and shall join in the cause, against the Board of Education of the City of Chicago, a body politic and corporate; City of Chicago, a municipal corporation, the president and vice-president of the Board of Education and the members thereof, all of whom are named as defendants, the secretary and auditor of the Board of Education, the Mayor of the City of Chicago, the City Treasurer of the City of Chicago and ex-officio School Treasurer of that City, and the Comptroller of the City of Chicago.

Paragraph 1 of the Complaint alleges that all of said plaintiffs have been in the employ of the defendant Board of Education and have been retired from active service of said Board as teachers or principals, either by compulsory retirement by the Board or by voluntary retirement on written request made to the Board, except plaintiffs who, as more specifically shown later in the Complaint, made written requests for voluntary retirement in May or June, 1935, which were not granted by the defendant Board; that each of the plaintiffs retired by compulsory retirement (being the first nine plaintiffs whose names appear above), had served prior to retirement, for a period of twenty years or more as such teacher or principal in the employment of said Board of Education, had attained the age as prescribed by law for compulsory retirement; that the plaintiffs who, as more fully thereafter set forth, voluntarily retired (being the next eight plaintiffs

named above) and those of the plaintiffs who prior to July 1, 1935, in writing requested retirement, which requests were not granted by the Board (being the last three plaintiffs whose names appear above) had at the time of such voluntary retirement or the making of such written request therefor served as teacher or principal, or assistant principal in the City of Chicago in active service of the defendant Board of Education for more than fifteen years prior to the making of such written request and had served in the public schools of the United States for twenty-five years or more prior thereto, and had at the time of such retirement or the making of written request therefor attained the age of sixty-five or more years.

Paragraph 2 describes the defendants and their respective positions and alleges that for twenty years continuously last past, defendant City of Chicago is and has been a city with a population ex-
6 ceeding 500,000; sets forth the positions held by the individual defendants as officers and members of the defendant Board of Education of the City of Chicago and as officers of the City of Chicago, and as to each alleges that such person is and has been such official acting as such.

Paragraph 3 alleges that under the law in force prior to April 20, 1917, defendant Board of Education had power to employ teachers, fix their compensation, and as held by the Supreme Court of this State in the case of *People ex rel. Fursman* v. *City*
7 *of Chicago*, 278 Ill. 318 (decided April 19, 1917) therein referred to and quoted from, could only make contracts with teachers for a period not extending beyond the ensuing school year, and had the

absolute right to decline to employ or re-employ any applicant for any reason whatever or for no reason at all.

Paragraph 4 alleges the enactment of the so-called Otis Amendments, effective April 20, 1917, immediately after the decision of said *Fursman* case and that Section 138 of the School Laws as so amended provided that after a satisfactory service for a three year probationary period, appointments of teachers and principals in the Chicago schools should become permanent, subject to removal for cause as provided by Section 161 of the School Act as so amended; that Section 138 of the School Act as amended by the Otis Amendments remained unchanged until
8 July 11, 1935, when there was written into the said Section a further exception to such permanency of tenure as follows: "subject to termination by compulsory retirement at the age of sixty-five (65) years."

The Otis Amendments comprise Sections 128 to 139, inclusive, and Section 161 of the School Act. (See Exhibit "D" referred to at this point.) (Rec. 74, 81; Abst. 57.)

Paragraph 5 alleges that by an Act effective on
9 its approval by the Governor May 19, 1926, known and in the Complaint herein referred to as the "Miller Act" (complete copy as originally enacted Exhibit "A" attached to Complaint and referred to here) (Rec. 68; Abst. 49) applicable to cities with a population exceeding 250,000 inhabitants, it was provided in Section 1 for the compulsory retirement in the year 1926 of all teachers and principals seventy-five (75) or more years of age; in

the year 1927, of those seventy-four (74) or more years of age; in 1928, of those seventy-three (73) or more years of age; in 1929, of those seventy-two (72) or more years of age, and in 1930 and in each year thereafter, of those seventy (70) or more years of age; that Section 2 of that Act provided "Each person so retired from active service who has served in the public schools of such city for twenty or more years prior to such retirement, shall be paid the sum of fifteen hundred dollars ($1500.00) annually and for life from the date of such retirement from money derived from the general tax levy for educational purposes."

Paragraph 6 alleges that defendant Board of Education had approved and recommended for passage an Act very similar to the Miller Act afterwards passed, as appears from the proceedings of the defendant Board for April 8, 1925, of which a copy is attached to Complaint, marked Exhibit "B" (Rec. 69; Abst. 51); that such approval was based upon
10 the recommendation of the Superintendent of the Board of Education and his report setting forth reasons quoted from in this paragraph and fully set forth in said Exhibit "B" in which, among other things, he pointed out that under the proposed Act the plan of compulsory retirement would be "put in effect gradually in order that the persons affected may have notice and be able to make their preparations accordingly."

Paragraph 7 alleges that following the approval of the proposed Miller Act by defendant Board of Education, conferences were held, attended by the
11 representatives of the Board. A revised form of a bill to present to the Legislature was drawn up

by the Law Department of the Board of Education in the form in which it was introduced in the Legislature and the bill was supported in the Legislature by the defendant Board of Education and by representatives of teachers' and principals' organizations; that it was approved and signed by the Governor on May 19, 1926, and on that date went into effect.

Paragraph 8 alleges that the defendant, Board of Education, the Miller Act not having then been approved by the Governor, assumed that that Act had failed to pass, and on December 9, 1925, on recommendations of the Superintendent, adopted a rule referred to as the "Emeritus Rule" to create an "Emeritus Service" to which, under the rule, all members of the teaching force should be assigned on respectively attaining age seventy. Copy of such recommendations of the Superintendent of Schools, as they appear in the Board of Education proceedings attached as Exhibit "C-1" (Rec. 72; Abst. 54) and copy of such proceedings showing resolution adopting and incorporating "Emeritus Rule" attached as Exhibit "C-2" (Rec. 73; Abst. 56).

Paragraph 9 sets forth suit in chancery commenced by Armstrong, Dodge and Hecox on behalf of themselves and others similarly situated, against the City of Chicago, Board of Education and other defend-
12 ants; that in that suit said "Emeritus Rule" was claimed to be invalid under the School Act applicable to the City of Chicago and to the Board of Education of that City, and it was sought to enjoin the enforcement of that rule; that a judgment was entered in the Circuit Court of Cook County, dismissing the bill for want of equity; that on appeal, that

judgment was on February 14, 1928, reversed and the cause remanded by the Appellate Court of Illinois for the First District, which directed the lower court to enter a decree directing the Board of Education to restore the complainants to their positions as principals and teachers in the Chicago public schools as of the date of their removal and that their tenure in such positions be subject to the provisions of the said Miller Act as originally in force May 19, 1926, and as amended June 24, 1927. In its decision in the Armstrong case, the Appellate Court held, 247 Ill. App. 584, that the Board of Education had no authority to "retire, and in effect remove all the principals or teachers, or other employees of a class,
13 solely upon the ground that each individual in that class, because of reaching a certain age, should be presumed to be inefficient", without charges being preferred or an opportunity to be heard, and a copy of the Opinion of the Appellate Court is fully set forth as Exhibit "D" (Rec. 74; Abst. 57).

Paragraph 10 sets forth the amendment of the Miller Act passed by the 1927 Legislature adding Section 3 to the Act, which provided for voluntary retirement of teachers and principals of the public schools of cities the size of Chicago after reaching age sixty-five who have served in the schools of the United States for twenty-five years or more and in the public schools of such city for fifteen years immediately prior to retirement under the Act, and providing that each person so retiring should "be paid annuities for life from moneys derived from the general tax levy for educational purposes" in amount of one thousand dollars ($1,000.00) on retirement at age sixty-five; eleven hundred dollars

$1,100.00) on retirement at age sixty-six; twelve hundred dollars ($1,200.00) at age sixty-seven; thirteen hundred dollars ($1,300.00) at age sixty-eight; fourteen hundred ($1,400.00) at age sixty-nine, and fifteen hundred dollars ($1,500.00) at age seventy and thereafter; copy of the Amending Act of 1927 attached as Exhibit "E" (Rec. 89; Abst 62); that at the same time the title of the Miller Act was also amended to include voluntary retirements as well as compulsory retirements.

14 Paragraph 11 sets forth the 1927 amendment to the Miller Act as originally proposed providing for voluntary retirement at ages sixty to seventy was submitted to the Board of Education of the City of Chicago in a report of the Superintendent of Schools recommending its passage at the meeting of March 9, 1927, which report is quoted from in this paragraph and points out (1) that the Miller Act then in force is a temptation to teachers to remain in service regardless of their health until attaining compulsory retirement age; (5) that laws providing for voluntary retirement at different ages lower than ages of compulsory retirement, are in force in other states; (6) that it would give to teachers who could not on account of health continue in the service until reaching the full age and having completed the twenty years required by the law then in force, just and equitable treatment in allowing to them a smaller annuity; (7) that it would not exhaust the Chicago teachers' pension fund since more teachers in the fifties would be encouraged to continue in the service to get the larger pension offered than teachers in the sixties would retire. A copy of said
15 report showing the above and other reasons is attached as Exhibit "F" (Rec. 90; Abst. 64).

Paragraph 12 sets forth that the defendant Board of Education on May 11, 1927, by unanimous vote adopted a motion to employ a competent firm of actuaries to investigate all phases of said proposed bill for voluntary retirement with a view to presenting the exact amount of money involved and the cost to said Board of Education as shown by the proceedings of the Board for May 11, 1927, a copy of which is attached to Complaint, marked Exhibit "G" (Rec. 92; Abst. 68).

The proceedings of the defendant Board of Education of May 25, 1927 shows that said Board had employed Henry R. Corbett, Actuary, and on that day presented said Actuary's report showing the cost to the defendant Board of the proposed amendment to the Miller Act providing optional retire-
16 ment between the ages of sixty-five and seventy; that the Special Committee on Legislative Matters recommended that the Board endorse the proposed bill with an amendment regarding retirement for physical defects. Said report and said approval by the Board are attached as Exhibit "H" (Rec. 93; Abst. 68).

Said report of said Actuary so presented to said Board on May 25, 1927, was headed "Cost to the Board of Education of the proposed Amendment to the Miller Law". It stated the revised form of the amendment granting $1000 for life on optional retirement at sixty-five, increasing $100 annually for each additional year up to $1500 at age seventy.

Said report was unanimously approved and adopted by the Board.

17 Paragraph 13 recites that after the decision of the Appellate Court in the *Armstrong* case (Ex-

hibit "D"—Rec. 74, 81; Abst. 57) the teachers affected by the "Emeritus Rule" who were still below compulsory retirement age under the Miller Act were restored to their teaching positions and paid their back salaries and those teachers who under the provisions of the Miller Act as in force May 19, 1926, were subject to compulsory retirement were paid back salaries until such date as their compulsory retirement took effect under said Miller Act and their retirement annuities from such times on.

18 Paragraph 14 recites the passage of the Act effective July 1, 1929, amending Section 3 of the Miller Act by eliminating therefrom the provision for voluntary retirement at age seventy and thereafter.

The entire Miller Act (Sections 1, 2 and 3) as amended by the laws of 1929 is set forth in Exhibit "I" attached (Rec. 95; Abst. 71) and in such form remained unchanged until the amendment effective July 11, 1935.

Paragraph 15 sets forth amendment to the Miller Act effective July 11, 1935, copy of which is attached as Exhibit "J" (Rec. 97; Abst. 72). By this Act the title of said Miller Act was amended by omitting the word "voluntary" as qualifying the word "retirement". Sections 1 and 2 were amended and Section 3 was repealed.

19 Section 1 of the Miller Act as so amended by said law of 1935 provided that the Board "as soon as practical after this law becomes effective" should retire all teachers, principals, etc., "who are sixty-five or more years of age" and "thereafter" should

retire all teachers, principals, etc., "on attaining the age of sixty-five years."

Section 2 of said Miller Act as so amended provided for a retirement annuity to be paid annually for life to each teacher, principal, etc., so retired—that is, so retired under and pursuant to the 1st Section of said Miller Act as amended in 1935—the sum of $500.00 and said amendment contained no requirements as to the length of service as a prerequisite to such retirement or the payment of such annuities, the provision theretofore contained in said Section 2 that such teacher, principal, etc., in order to receive the retirement annuity should have served in said schools of Chicago for twenty years or more being wholly omitted from said Miller Act as so amended.

Sections 1 and 2 of said Miller Act as originally enacted remained unchanged from May, 1926, to July, 1935.

Paragraph 16 states that as hereinabove set forth the defendant Board of Education had given careful consideration pending passage to the original Miller Act, and to the amendment of the Miller Act
20 of 1927 by adding Section 3 thereto providing for voluntary retirement at ages sixty-five to seventy, both inclusive, on annuities ranging from $1000 to $1500, both inclusive. Alleges that as to the amendment of 1935, the proceedings of the Board during the period pending the passage of that Act failed to show any consideration by the Board of that Act. That as far as appears in the Board records no investigation was made by it or on its behalf of the effect of the Act either upon the teaching force or as to the financial results which might follow the

reduction of compulsory retirement age, as to persons "thereafter" retiring, to age sixty-five, or
21 from the repealing of the provisions of said Miller Act theretofore in force permitting voluntary retirement, or by reason of the payment of an annuity to persons retiring under the law as amended, of $500 per annum for life instead of annuity provided to be paid under the former law to persons retired under that law. Alleges that when the amending Act of 1935 was before the State Legislature and prior to final vote thereon, agents of defendant Board of Education were in attendance at the sessions of the Legislature advocating and supporting the passage of the amendment, and alleges on information and belief that the amending Act of 1935 was sponsored and supported by the defendant Board of Education.

Paragraph 17 sets forth report of Superintendent of Schools to the Board of Education at its meeting of July 28, 1926, reporting that eighteen persons therein named who according to the records would "on August 1, 1926, be seventy-five or more years of age, and who, on that date, will have served in the public schools of this city for twenty years, shall be retired from active service and shall be paid the sum of $1,500.00 annually for life, provided that they shall be subject to call of the Superintendent of Schools for consultation and advisory service:" that said report, in addition to the names
22 of such persons, gives the date of birth of each, age on August 1, 1926, length of service of each on that date, and was followed by the statement of "Reasons" in which was set forth the fact that the Governor had signed the Miller Act on May 19,

1926, which Act was then set forth in substance. The report also recited that the persons therein named had theretofore been assigned to the "Emeritus Service" and that said report was unanimously approved and adopted by the Board of Education; also a further and similar report at the same meeting by the Superintendent of Schools recommending for compulsory retirement two persons therein named and recommending that such persons be retired from active service and "be paid the sum of $1,500.00 annually for life."

Paragraph 18—Recites a report from the Superintendent of Schools presented to a meeting of the Defendant Board on January 12, 1927, copy of which report is attached as Exhibit "K" (Rec. 98;
23 Abst. 73). Said report recommended that fourteen (14) persons, therein named, who on February 1, 1927 would be 74 or more years of age and would have served in the public schools of Chicago for twenty years should "be retired from active service" and should "be paid the sum of $1500.00 annually for life," subject to the call of the Superintendent for consultation and advisory service. Report gave the respective dates of birth, age on February 1, 1927 and length of service. Following this was a statement of reasons, reading in part as follows: "* * * To each person so retired who served in the public schools of such city for twenty or more years prior to such retirement shall be paid the sum of $1500.00 anually, and for life, from the date of such retirement, from the money derived from the general tax levy for educational purposes;"

On motion of Mr. Coath this report was deferred until the next meeting. At such next meet-

ing, January 26, 1927, said report (Exhibit "K") was adopted by a vote of six to one.

24 Among the persons so retired pursuant to said report was Plaintiff Chester C. Dodge, who until his compulsory transfer to the emeritus service in February, 1926, had been principal of the Hibbard High School. He was born March 16, 1852 and on February 1, 1927, as of which date he was compulsorily retired, had attained the age seventy-four years and ten months, and had been in the service of the Board as teacher and principal for forty-five years, and since his said retirement until September, 1935 received his said retirement annuity as provided for by the Miller Act on February 1, 1927 in the amount of $1500.00 annually.

Paragraph 19. Recites that the Defendant, Board of Education, pursuant to said Section 1 of said Miller Act, in every case in which one or more persons became subject to compulsory retirement, compulsorily retired as of August 1 and February 1, 1928 and of each year thereafter to and including retirements as of February 1, 1935, all teachers, principals and other educational employees upon their respectively attaining the ages at which said Miller Act provided they should be so compulsorily retired.

25 Said defendant Board also paid to each of such teachers, principals and other educational employees so compulsorily retired the annual retirement allowance of $1500.00 for the periods from their respective compulsory retirements to and including July, 1935. Such payments by the defendant Board during the last preceding school year were made in twenty semi-monthly installments of $75.00 each.

Paragraph 20. Eight other original plaintiffs beside plaintiff Dodge have been compulsorily retired from active service.

Plaintiff James E. Armstrong was compulsorily retired by action of said Board at a meeting on January 23, 1929, copy of which proceedings are attached marked Exhibit "L" (Rec. 100; Abst. 75). Plaintiff Armstrong was born November 30, 1855, was retired as of February 1, 1929, having then attained the age of seventy-three years and having served as teacher or principal in said public schools
26 for 44 years, and at the time of such retirement was principal of the Englewood High School.

Plaintiff Archibald O. Coddington was compulsorily retired as of August 1, 1929 by Board action at a meeting of July 10, 1929. At the time of retirement he was 72 years old and had served as teacher and principal in the Chicago public schools for 39 years and was at the time of retirement principal of the Stockton Junior High School.

Plaintiffs Genevieve Cook and Henry F. Keen were compulsorily retired as of February 1, 1930 by action taken by defendant Board at a meeting held January 8, 1930. At the time of said retirement said Genevieve Cook had attained the age of 70 years and had served in the Chicago public schools for 37 years, being at the time of retirement a teacher in the Juvenile Detention Home. Said plaintiff Henry F. Keen was born June 11, 1858, served in the Chicago public schools 33 years and was at the time of retirement a teacher in the Crane Junior College; had served as a teacher in
27 the public schools of Michigan for five years before coming to Chicago; is now 77 years of age, without

employment, supporting his wife, and is almost, if not entirely, dependent for the support of himself and his wife upon the retirement annuity provided by the Miller Act which he has been receiving from the time of his said retirement to and until September, 1935.

Plaintiff Wallace H. Whigam was retired as of February 1, 1931 by action of the Board at a meeting January 14, 1931, and at the date of retirement was 70 years old and had served twenty-six years in the Chicago public schools, and at retirement was a teacher in the Schurz High School.

Plaintiff Hiram B. Loomis was compulsorily retired by defendant Board as of August 1, 1933, on which date he was the principal of the Hyde Park High School and had attained the age of seventy years and been employed as a teacher and principal in the Chicago schools for more than twenty years.

Plaintiff Helen Toole was compulsorily retired by defendant Board as of February 1, 1931, on which date she was more than seventy years old and had served in the public schools of Chicago for more than twenty years.

Plaintiff Frank L. Morse was compulsorily re-
28 tired by defendant Board as of August 1, 1934, at which time he was principal of Harrison Technical High School, had attained the age of more than seventy years and been a teacher and principal in the Chicago public schools for more than forty-six years.

All of said plaintiffs so compulsorily retired from the dates of their several respective retirements, received and had been receiving the retirement an-

nuities so payable to each under said Miller Act in the amount of $1500.00 a year to each, to and until September, 1935.

Paragraph 21 states that from July 1, 1927 to May 15, 1935 the defendant Board of Education, pursuant to Section 3 of the Miller Act as amended in 1927 and in 1929, retired from active service as voluntary retirements all teachers, principals and other educational employees who were qualified thereunder, upon their own written requests, such retirements becoming effective from the dates named in such requests.

The defendant Board of Education also paid to all such teachers, principals and other educational employees so voluntarily retired, the retirement annuities provided for the age at which each such teacher, principal or other educational employee so voluntarily retired, up to and until September, 1935, such payments being made in twenty semi-monthly installments during the last preceding school year,
29 each payment to each such annuitant being in the amount of one-twentieth of his or her said yearly annuity.

Paragraph 22 states that from July 1, 1927 to and including May 15, 1935 the Superintendent of Schools presented to the defendant Board of Education reports recommending that in accordance with their written requests, certain members of the teaching force named in said reports be retired from active service pursuant to the provisions of the Teachers' Retirement Law, effective on the dates specified in said reports, showing as to each, date of birth, dates and length of service in Chicago

public schools and in the United States outside of Chicago. In every instance said defendant Board of Education, at the respective meeting at which such reports were presented, approved and adopted said reports and retired the members of the teaching force, in such reports mentioned, from active service as voluntary retirements effective on the dates specified.

Paragraph 23 names eight plaintiffs who have voluntarily retired under said Section 3 of said Miller Act as originally enacted in 1927, upon the
30 written request of each of said plaintiffs for such voluntary retirement.

Plaintiff George B. McClelland made his written request for voluntary retirement and was so retired as of October 1, 1928 by Board action at a meeting on September 26, 1928. At that time he was a teacher in the Phillips High School, had served in the Chicago public schools for twenty-seven years and was sixty-seven years old. Under said Miller Act he was retired upon an annuity for life of $1200.00 per year, and said annuity has been paid since such retirement to and until September, 1935.

Plaintiff Nellie C. Callahan made written request for voluntary retirement, which was presented at a meeting on December 14, 1932, and said plaintiff was retired as of January 28, 1933. At the time of retirement she was a teacher in the Talcott School and had served in the public schools of Chicago for forty-five years, having attained the age of sixty-five years. From the date of said voluntary re-
31 tirement to and until September, 1935, said plaintiff has received the retirement annuity of $1000.00 a year.

The Superintendent of Schools, in a report presented to the defendant Board on May 15, 1935, recommended "that in accordance with their written requests, the following named members of the teaching force be retired from active service pursuant to the provisions of the Teachers' Retirement Law, effective on the dates specified." Plaintiff Caroline M. Dean was one of those recommended for retirement in said report and requested retirement on May 18, 1935, having served twenty-seven years in the Chicago public schools and having attained the age of sixty-eight years. She was thereupon retired as of May 18, 1935 and thereafter received the retirement annuity at the rate of $1300.00 a year to September, 1935.

Plaintiff Catherine L. Baird made written request for voluntary retirement as of April 27, 1935, at which time she was an elementary teacher in the Von Steuben School, having attained the age of
32 sixty-eight years and taught in the Chicago public schools for thirty-five years. She was voluntarily retired on April 27, 1935, and since that date to and until September, 1935, has received the retirement annuity provided by the Miller Act at the rate of $1300.00 a year.

Plaintiff Laura Tierney was upon written request voluntarily retired in June, 1933, at which time she was an elementary teacher in the Chicago public schools, having taught in such schools for forty-eight years and having attained the age of sixty-seven years. Since said voluntary retirement until September, 1935, said plaintiff has received the retirement annuity of $1200.00 a year.

Plaintiff Nellie T. Woulfe was, upon written request in August, 1933, voluntarily retired at age sixty-five, having taught in the Chicago public schools for thirty-three years and being then a teacher in the Talcott School. Said plaintiff has received her retirement annuity until September, 1935, as provided in the Miller Act, in the amount of $1000.00 a year.

33 Plaintiff Mary L. M. Corbett was upon her written request voluntarily retired February 1, 1935. She was then a high school teacher and had taught in the Chicago public schools for twenty years and in the public schools of the United States outside of Chicago for an additional ten years and had attained the age of sixty-six years. Since her retirement until September, 1935, said Plaintiff has received her retirement annuity as provided for in said Miller Act at the rate of $1100.00 a year.

Plaintiff Lillian F. Dougherty was upon written request voluntarily retired under Section 3 of the Miller Act in June, 1933, at which time she was a teacher in the Talcott School and had taught in the Chicago public schools for forty-four years and had attained the age of sixty-seven years. Since her retirement until September, 1935, said plaintiff received the retirement annuity of $1200.00 a year.

Each of said plaintiffs so voluntarily retired, as in this Paragraph 23 set forth, was, up to the date of such retirement, a teacher or principal in said public schools of Chicago and had within the last twenty years prior thereto served as a teacher or principal or in both such capacities for fifteen years or more.

Paragraph 24 states that it appears from the of-
34 ficial reports of the Board of Education printed and published by authority of said Board, covering the period from July 1, 1927 to and including May 15, 1935, that the practice of the various superintendents of schools and of the defendant Board of Education over that period was uniform as to voluntary retirements pursuant to Section 3 of the Miller Act, and was in accordance with the provisions of said Section 3, and such practice was without exception that a teacher or principal who had served for the length of time required by the Act in the public schools of the United States and in the public schools of said City of Chicago, and who had attained the age of sixty-five or more, as provided in said Section 3, should, upon written request so made to said Board of Education, through said superintendent, thereupon be recommended by said superintendent at the next meeting of said Board for voluntary retirement. Upon such recommendation for voluntary retirement, the practice of said Board over said period of time was uniformly that of granting such voluntary retirement, such action being taken without exception at the meeting at which such recommendation was presented; or if no action could be taken at such meeting for lack of a quorum, then such action was taken at the first meeting thereafter, at which a quorum was present, such voluntary retirement being granted as of the date specified in the written request and at which date such person was so entitled to be voluntarily retired. By such uniform and unvarying practice over said period by said superintendent of schools and by said Board of Education there was adopted by said Board a contemporaneous uniform

and practical administrative construction of said Section 3 of said Miller Act as to voluntary retirements under which the voluntary retirements of teachers and others to whom said Miller Act was applicable, constituted on the part of said Board mere ministerial acts pursuant to recommendations
35 made to said Board by said superintendent of schools, which recommendations were based wholly upon the pre-requisite conditions as prescribed by Section 3 of the Miller Act having been fulfilled, that is, the written request together with the requirements as to age and length of service. Under Section 3 of the Miller Act such written request having been made and the applicants being qualified under the Miller Act for voluntary retirement, the Board of Education had no discretion and by such practice recognized that thereupon the approval of such reports of the Superintendent based upon the proper facts and written requests was in each case a ministerial act of the Board which it was the duty of the Board to at once perform without exception under Section 3 of the Miller Act.

Paragraph 25 states that plaintiff Elmer E. Burns was on May 31, 1935 employed by the defendant Board of Education as a teacher in the Austin High School, and on that day made written request to said Board under Section 3 of the Miller Act as the same was then in full force and effect, for voluntary retirement to take effect June 28, 1935. Said plaintiff had been in active service in
36 said public schools for thirty years, was sixty-seven years old on February 22, 1935.

The Superintendent of Schools thereafter prepared report Number 35263-A entitled "Voluntary

Retirement of Teachers'' in which said Superintendent recommended ''that in accordance with their written requests the following named members of the teaching force be retired from active service, pursuant to the provisions of the Teachers' Retirement Law effective June 28, 1935,'' meaning thereby Section 3 of the Miller Act. Said report named eighty teachers, principals and other educational employees, with information as to each, giving date of birth, length of service in the Chicago public schools and in schools of the United States, and then bore the typewritten signature of Mr. Bogan, Superintendent of Schools, and the approval of the Auditor and was dated June 12, 1935.

The regular meeting of said Board of June 12, 1935 was recessed for lack of a quorum until June 19, 1935, and on June 19, 1935 was adjourned for lack of a quorum. Said report of the Superin-
37 tendent was presented at the next meeting of said Board held June 26, 1935, at which meeting said Board, departing from the uniform practice hereinabove set forth as to taking immediate action upon such reports recommending persons for voluntary retirement, referred said report number 35263-A to the General Committee and Standing Committee of all members of said Board and deferred and postponed action thereon. A mimeographed copy of said report is attached as Exhibit ''M'' (Rec. 101, 2, 3, 4; Abst. 75). A copy of the official report of the proceedings of said Board of said meeting of June 26, 1935, showing a copy of said Superintendent's report and the Board's action thereon, is attached as Exhibit ''N'' (Rec. 105: Abst. 76).

Paragraph 26—Plaintiff Azile B. Reynolds, serving as principal of the Armstrong Elementary School, in June, 1935 made written request, under
38 Section 3 of the Act as then in full force and effect, for voluntary retirement from active service, to take effect June 16, 1935. Said plaintiff was sixty-seven years old May 18, 1935 and had served in the Chicago public schools for thirty-seven and one-half years.

Plaintiff Archibald Paterson, on July 17, 1935, was a teacher in Englewood High School, and on said date made written request to defendant Board under Section 3 of the Miller Act, as the same was then in full force and effect, for voluntary retirement from active service, to take effect June 28, 1935. Said plaintiff had served in the public schools of Chicago for twenty-seven years and had attained the age of sixty-six years.

On June 26, 1935 the Superintendent of Schools presented to Defendant Board report number 35263-N containing a similar recommendation that in accordance with their written requests the persons named "be retired from active service pursuant to the provisions of the Teachers' Retirement Law effective on the date specified herein." Said report contained ninety-two names, including plaintiffs Reynolds and Paterson, and named the effective date for voluntary retirement as June 28, 1935.
39 Departing from its uniform practice hereinbefore set forth, said Board referred said report to the general committee and postponed and deferred action on the same. A mimeographed copy of said report is attached as Exhibit "O-1" (Rec. 107; Abst. 77) and a printed copy of the Board proceedings

showing said report and the Board's action thereon is attached as Exhibit "O-2" (Rec. 111; Abst. 78).

A further report of the Superintendent of Schools Number 35242-D was presented at said meeting of June 26, 1935 and a mimeographed copy is attached as Exhibit "P" (Rec. 113; Abst. 79). Said report was dated June 26, 1935 and set forth that application for voluntary retirement had been presented since the preparation of Reports A-35263 and N-35263 then pending before said Board, and presented the names of three persons who had made written requests for voluntary retirement under Section 3 of the Miller Act as then in full force and effect, together with information regarding such persons showing that they were entitled to such voluntary retirement. Defendant Board, again departing from its former uniform practice as above set forth, referred said report to the General Committee and postponed and deferred action on same. Copy of the Board proceedings is attached as Exhibit "Q" (Rec. 114; Abst. 79).

Paragraph 27 recites that thereafter, on July 24, 1935, defendant Board adopted a report purporting and attempting to compulsorily retire, as at age sixty-five, one hundred seventy-five persons each of whom had prior to June 28, 1935 filed a written request for voluntary retirement under Section 3 of the Miller Act as in force prior to July 11, 1935, and purporting to retire said plaintiffs Burns, Reynolds and Paterson compulsorily under the Miller Act as amended in July, 1935, at an annual retirement annuity of $500.00 to each.

Plaintiffs urge and insist that said action of said Board in failing to adopt and approve said three

reports of the Superintendent of Schools at the regular meeting of June 26, 1935 was arbitrary, illegal and void, and unconstitutional under the Constitutions of the State of Illinois and the United States of America as depriving said plaintiffs Burns, Reynolds and Paterson and all others similarly situated, named in said reports, of vested property rights and of contract and quasi contract rights, and that the action of said defendant Board in subsequently, on July 24, 1935, attempting to compulsorily retire said members of the teaching force, was likewise and upon the same grounds arbitrary, illegal, void and unconstitutional, and constituted the taking of property without due process of law, and
41 an attempt to impair the obligations of contracts.

Paragraph 28 recites that defendant Board continuously since prior to 1925 has printed and published official reports of its proceedings under statutory authority, and describes said reports. Also states that the exhibits attached to this Complaint, recited to be reports of proceedings, are copies of such official reports. Said reports are bound in volumes, and in volume form and in pamphlet form are available to the public at all times, and numerous copies are distributed. The teaching force of Chicago and persons retired therefrom, including the plaintiffs, have access to such reports, which are also distributed to various organizations of teachers and principals and retired teachers and principals. The matters set forth in said reports are therefore matters of common knowledge to the teachers and principals and other educational employees of the public schools of Chicago and retired teachers and principals and other persons interested, and

42 have been matters of common knowledge since the respective dates of the printing and publishing and distribution of such reports.

Paragraph 29—The fiscal year of defendant Board is the calendar year. On January 17, 1935 said Board adopted its "Annual School Budget for 1935" in which said Board appropriated moneys to defray necessary expenses and liabilities of said Board to be paid or incurred during the fiscal year 1935. Section 2 of said budget provides that the amounts thereinafter set forth, or so much thereof as may be authorized by law, as may be needed "are hereby appropriated for educational purposes." Here follows three specific quotations from said budget of an item "Retirements—Miller Law $1,125,000.00." On January 17, 1935 said Board,
43 after adopting said budget, certified that said Board required the levy of a school tax, and made formal demand and direction to the City Council of Chicago to levy said school taxes for the year 1935, and thereafter said City Council duly levied said school taxes for the year 1935.

A copy of said 1935 annual school budget is attached marked Exhibit "R" (Rec. 116; Abst. 80). A copy of said tax levy resolution is attached marked Exhibit "S" (Rec. 121; Abst. 82).

No public moneys can be lawfully expended for school purposes by the defendant School Treasurer
44 except upon a voucher signed by the President or Secretary of the Board and audited by its Auditor and counter-signed by the Mayor and the City Comptroller.

Plaintiffs state upon information and belief that the portion of said amount of $1,125,000.00 still un-

expended and so appropriated in said annual school budget for the payment of retirement annuities under the Miller Act is sufficient to pay for and during the remainder of said fiscal year, being the remainder of the calendar year 1935, the remaining unpaid portions of the annuities provided by the Miller Act, as the same was in full force and effect at the time of their respective compulsory and voluntary retirements, plaintiffs should receive thereunder, including the amounts due under said Miller Act as then in force to plaintiffs who should have been so voluntarily retired under Section 3 as the same was in force before its repeal in July, 1935, and also to pay the same to all other persons situated similarly to all the plaintiffs herein.

Paragraph 30. Alleges on information and belief that there were compulsorily retired under the Miller Act from the date it became effective by the Governor's signature to and until April 30, 1935, 227 persons, of whom 43 had died and 184 were living at that date, and receiving the retirement annuity, $1500 per year each from the dates of retirement to that date, and, except those who have since died received such annuity to and until September, 1935, and are entitled to continue to receive the same for the remainder of their lives.

Alleges on information and belief that during the period Section 3 of the Miller Act was in force to and until April 30, 1935, 830 teachers, principals and other educational employees have been retired thereunder, of whom 112 died prior to April 30, 1935, 718 being still living on that date, and that such persons so voluntarily retiring at each of the different ages are: 291 at age 65, of whom 23 died prior

to April 30, 1935, and the remaining 268, except those who have since died, received up to September 1935, a retirement annuity of $1000 per year and are entitled to continue to receive the same annually for the remainder of their lives; 123 retired at age 66, of whom 20 had died April 30, 1935, leaving 103 then living, who except those who had
46 since died, were until September, 1935 receiving $1100 a year retirement annuity, and are entitled to receive the same during the remainder of their lives; 122 retired at age 67 of whom 9 had died, leaving 113 still living on April 30, 1935, who except those who might have died since, received from dates of retirement until September, 1935, an annuity of $1200 each and are entitled to receive the same for the remainder of their lives; 96 retired at age 68, of whom 15 died prior to April 30, 1935, leaving still living on that date 81, who with the exception of those who might have since died, received retirement annuities until September, 1935 in the amount of $1300 each per year, and are entitled to receive same for the remainder of their lives; 96 retired at age 69 of whom 12 died before April 30, leaving 84 still living, who except those who might have since died, each received retirement annuities of $1400 from the dates of retirement until September, 1935, and are entitled to continue to receive the same for the remainder of their lives; that 102 voluntarily retired at age 70 and over, of whom 33 had died, leaving still living on April 30, 1935, 69 who, with the exception of those
47 who might have since then died, received from the dates of their respective retirements until September, 1935, annuities of $1500 a year and are entitled

under said Miller Act to continue to receive the same for the remainder of their lives.

Plaintiffs allege that it appears from the official printed copies of the records of the defendant Board of Education that in June, 1935, William J. Bogan, then Superintendent of Schools of Chicago, pursuant to Section 3 of the Miller Act, recommended for voluntary retirement not less than 175 persons and that such recommendations were placed before the defendant Board of Education and called to the attention of its members at its regular meeting June 26, 1935; that although each of the 175 persons, as appears from the recommendations of the Superintendent of Schools, as same are set forth in the proceedings of the Board, were then entitled to voluntary retirement, no action was taken by the Board other than to refer such recommendations to the General Committee, and as far as the records of the Board show, the matter was never reported out of that Committee nor any further action taken by that Committee or by the Board; that on the contrary, at the meeting of the Board July 24, 1935, as appears from the official printed records, all of said 175 persons who had so made written requests for voluntary retirement before the 1935 amendment of the Miller Act went into effect and were then eligible thereunder to be so retired and had met all requirements therefor, and who were so recommended
48 by the Superintendent of Schools, were by the Board compulsorily retired or purported to be so compulsorily retired, it being alleged that the Board had no right or authority to retire those 175 persons except under the Miller Act as it was in force and effect before the 1935 amendments became effective

and by voluntary retirements and upon retirement annuities for life as provided in that Act before the 1935 amendments became effective.

Paragraph 31 alleges that prior to August 1, 1935, defendant Board of Education paid annuities to plaintiffs and others similarly situated who retired prior to August, 1934, in twenty installments and to those who retired after August, 1934 in similar installments in the amounts provided for by the Miller Act, as the same was in force and effect prior to the July, 1935 amendments, which payments as to each of such annuitants aggregated for such period the full amounts to which each was entitled, as provided by said Miller Act by reason of their retirements, compulsory or voluntary, at the ages at which they retired. After the amendments of 1935 went into effect, on July 11, 1935, the defendant Board apparently on the assumption that those amendments applied to and reduced the amounts payable as retirement annuities to the plaintiffs and others similarly situated, and regardless of the fact that the annuitants had retired under the Miller Act as it was in force before the 1935 amendments became effective, on September 20, 1935, made a payment to each annuitant and each of the plaintiffs of $25.00 only instead of an amount equal to one-twentieth of such retirement annuity; that if the payment had
49 been based on the amounts theretofore paid, it would have been $75.00 to each annuitant compulsorily retired at age 70 or more, or voluntarily retired at age 70 or more, and as to those voluntarily retired at ages 65, 66, 67, 68 and 69, would have been respectively $50.00, $55.00, $60.00, $65.00 and $70.00; that a true and correct copy of the check or war-

rant for said sum of $25.00 so sent by defendant Board of Education to plaintiff Armstrong, dated September 20, 1935, is attached to the Complaint marked Exhibit "T" (Rec. 122; Abst. 83); that the other checks sent to all annuitants, including all plaintiffs were exactly the same as that sent to plaintiff Armstrong, except the name of annuitant on the face thereof, and the number of the check on the upper right-hand corner; that in all cases, the matter on the back of each check was exactly the same as on the back of said check to Armstrong, of which Exhibit "T" is a copy; that with each of said checks the defendant Board of Education had sent a printed document designated "Order For Next Annuity Payment", which entire document was printed except the letters and figures indicating the date September 27, 1935 thereon, and the date October 4, 1935, thereon and except for a stamped number at the bottom, which number varied on the copies sent to the different annuitants; that a copy of such "Order For Next Annuity Payment" is attached, marked Exhibit "U" (Rec. 123; Abst. 85) and a copy of the return, self-addressed envelope which was also enclosed and sent to each annuitant is attached to the Complaint and marked Exhibit "V" (Rec. 124; Abst. 86); that other than the check, "Order For Next Annuity Payment" and return envelope, no document or statement of any kind was sent to plaintiffs or any of them explaining the reason for the reduction in amount of such payment, or any other statement.

That plaintiffs, after receipt of said checks and the accompanying return envelopes and "Orders For Next Annuity Payment", each sent to defend-

ant Board of Education a statement in writing accepting such payment to apply on what they claimed should be the amount paid them and demanding the payment of the balance of the amount claimed to be due, and that future payments should be in the amounts claimed to be due them under the Miller Act as the same was in force before July 11, 1935, and showing in each case what such balance then due and the amounts thereafter claimed to be due were. A copy of such letter so sent by Plaintiff Dodge is attached to the Complaint as Exhibit "W" (Rec. 125; Abst. 87); that the demand sent by the other plaintiffs is the same as that sent by Plaintiff Dodge, except date and signature of person sending, and the amount shown, the amounts varying in accordance with the annuities which plaintiffs are entitled to receive under the Miller Act in force at the time of their respective retirements, taking into consideration the nature of their retirement and the age of each at date of retire-
51 ment. None of the plaintiffs received any reply to such demand or acknowledgment thereof from defendant Board, or any one acting on its behalf, but each has received since sending in such demand a second check for a second installment of retirement annuity each in the amount of $25 instead of the amounts so received prior to September, 1935, and the amounts which they claim and did claim in said letters sent to the Board of Education should be paid them; that said second checks for $25 were dated October 4, 1935, a copy of the check sent to Plaintiff Armstrong being attached to the Complaint and marked Exhibit "X" (Rec. 126; Abst. 88); that the checks to the other plaintiffs, dated October

4, 1935, were the same as the check to Plaintiff Armstrong except for the name of annuitant, and number.

That by its action in reducing the amounts paid to plaintiffs and others similarly situated from an installment amounting to one-twentieth of amounts from $1500 to $1000, depending upon whether compulsorily or voluntarily retired and at what age; and by failure to make any reply to said demands of plaintiffs for the additional amounts claimed under provisions of the Miller Act in effect at the time of their respective retirements and similar demands of those who had endeavored to voluntarily retire under that Act as to whom the defendant Board of Education attempted to prevent their retirement; and by again, after the making of such demand, sending to the plaintiffs and such others similarly situated a second installment, dated October 4, 1935, of $25.00,
52 the said Defendant has taken the position that such annuitants are only entitled to the retirement allowances as provided in the amendatory law effective July 11, 1935, amending the Miller Act. Plaintiffs contend that the Board should be required to immediately pay to each of them and to others similarly situated the difference between the amount of $50.00, the aggregate of the two checks so paid to each, and an amount equal to one-tenth of the retirement annuities provided for by the Miller Act in force when they retired or should have been retired, being the balance between $50.00 and $150.00 if compulsorily retired or voluntarily retired at age 70 or over, and the difference between the amount of $50.00 and the amounts of $100.00, $110.00, $120.00, $130.00 or $140.00 if they voluntarily retired at ages 65, 66, 67, 68, or 69.

Paragraph 32 alleges on information and belief that there is now in preparation an annual school budget for the year 1936, or at least material and data preliminary to the preparation of such budget in and by which defendant Board, when same is prepared, will appropriate sums of money to defray expenses and liabilities of the Board to be paid or incurred during the fiscal and calendar year 1936; that there will be prepared and adopted by the defendant Board, based upon such school budget for 1936, a resolution similar to that for 1935, as set
53 forth in Paragraph 29 of the Complaint, certifying that said Board requires to be levied upon the equalized assessed valuation of taxable property in the City of Chicago, a school tax for the purposes and amounts set forth in the annual school budget, and resolving that formal demand and direction be made on the City Council of the City of Chicago to levy such tax for 1936, and directing the president and secretary of said Board to present and file copy with said City of such order and direction by certified copy.

Alleges that in view of the position taken by the defendant Board in sending plaintiffs checks in such reduced amounts and ignoring the demands of plaintiffs for the balances claimed by them, the said Board of Education in said annual school budget so in preparation or about to be prepared, which in due course will be adopted early in the year 1936, will not appropriate a sufficient amount for paying the annuities to plaintiffs and others similarly situated, which they should receive pursuant to provisions of the law under which plaintiffs and others have been or should have been retired but will appropriate and

cause to be included in such tax levy and in the demand therefor to the City of Chicago, a sufficient amount to pay for the fiscal year 1936 annuities to retired annuitants in every case of not exceeding $500.00 instead of the larger amounts to which they, as above alleged, are entitled. Plaintiffs contend that said Board should be compelled by the Court to appropriate a sufficient amount to pay annuitants so retired and those who attempted to retire under the Miller Act as same was in force before July 11, 1935, the annuities thereby provided.

54 Paragraph 33—Plaintiffs compulsorily retired ever since retirement have accepted the retirement allowances provided for by the Miller Act and have been at all times and are and have held themselves as subject to the call of the Superintendent of Schools of the City of Chicago for consultation and advisory service and have been and are ready, willing and able to give such consultation and advisory service. Plaintiffs who voluntarily retired made written requests therefor as hereinbefore set forth, and from and after such retirements accepted the retirement allowances as provided in the Miller Act for such plaintiffs, and they and also plaintiffs who made written requests for retirement, which written requests were not acted upon by said Board of Education, have been subject to call for consultation and advisory service and have been and are ready, willing and able to give such consultation and advisory service.

Pursuant to and as the result of their compliance with the prerequisites as to length and terms of service and of such acceptance of the provisions of said

Miller Act, the plaintiffs have become entitled to contractual and quasi contractual rights thereto to receive for life the retirement allowances therein provided for.

Paragraph 34. The amendatory act of 1935 (Exhibit "J" attached to complaint) (Rec. 97; Abst. 72) as appears from the terms and provisions there-
55 of, applies only to teachers, principals and other educational employees in the public schools of Chicago, 65 or more years of age, retired by said Board of Education "as soon as practical after" the amendment became effective and those who should "thereafter" be retired by said Board of Education on attaining age 65; said law as so amended provides only for compulsory retirements and Section 2 thereof provides for payment of $500.00 annually and for life from money derived from general tax levy for educational purposes to each person so retired, meaning and designating thereby each person compulsorily retired at age 65 or over after said amendment became effective. No provision is contained in said Act as to teachers, principals and other educational employees who had theretofore been retired under the law theretofore in force. Rights of such teachers and others theretofore retired and of those who theretofore met all requirements for voluntary retirement and made written requests therefor, including rights of all plaintiffs, were fixed and determined by law in effect at the time of their respective retirements, or at the time when they made written requests for voluntary retirements, which written requests were not acted upon. These rights were preserved to them under Section 4 of the Law of Illinois regarding statutes, which provided in part

(Cahill Ill. Rev. Stat. 1935, Chap. 131 on Statutes, Par. 4):

> "No new laws shall be construed to repeal a former law, whether such former law is expressly repealed or not, as to * * * any right accrued, or claim, arising under the former law, or in any way whatever to affect * * * any right accrued, or claim arising before the new law takes effect, save only that the proceedings thereafter shall conform, so far as practicable, to the laws in force at the time of such proceeding. * * * This section shall extend to all repeals, either by express words or by implication, whether the repeal is in the Act making any new provision upon the same subject or in any other Act."

56 That law has been in full force without change or amendment since 1874.

The retirement allowance provided for by the Miller Act in force prior to July 11, 1935, was and was intended to provide for deferred compensation for services rendered by persons retired from the service after the law went into effect. Ever since the original enactment of Miller Act in 1926, and prior thereto, the school law of Illinois has made provisions for pensions payable to retired teachers in the City of Chicago from a pension fund therein provided for. By the Miller Act, as originally enacted and thereafter amended, it has been provided that nothing therein contained should impair or prejudice rights of teachers or principals so retired to annuities under such other provisions concerning such teachers' fund or teachers' pension and retirement fund established in accordance with the provisions of any statute of Illinois, and further pro-

vided that such Miller Act should not repeal or modify any other statutory provision.

In 1931 the law concerning teachers' pension funds and teachers' pension and retirement funds referred to in the Miller Act was modified and amended by adding to Section 157 of the School Act (Cahill Ill. Rev. Stat. 1931, Chap. 122—Schools, Par. 183) being one of the sections relating to pensions, a proviso referring to the Miller Act and providing that any teacher "may receive in addition to the pension under this Act any compensation or annuity provided to be paid by the Board of Education of such City after retirement from active service under any compulsory or voluntary retirement law now or here-
57 after in force." The only compulsory or voluntary retirement law then or thereafter in force applicable to cities having a population of 250,000 and Boards of Education in such cities, was said Miller Act and in said quoted proviso added by the 1931 amendment, the annuity provided for in the Miller Act was referred to and designated and defined as a compensation or annuity provided to be paid by the Board of Education after retirement from active service.

The said law as to teachers' pension fund or teachers' pension and retirement fund to which that proviso was added by the 1931 amendments was a law applicable to cities having a population exceeding 500,000 inhabitants, and therefore to Chicago only, that being the only city having a population exceeding 500,000, and the Miller Act applied to cities having a population of more than 250,000 and therefore to the City of Chicago.

Should it be attempted to construe the amendatory act of 1935 amending the Miller Act as retroactive and as applicable to plaintiffs herein and others similarly situated who have voluntarily retired or been compulsorily retired before the amendatory act of 1935 went into effect, or to those plaintiffs and others similarly situated who having met all requirements under such former law for such voluntary retirement had made written requests therefor while such former law was still in effect, which written requests had not been acted upon, such construction of said law resulting in a reduction of the retirement allowances of all persons to $500.00 each from amounts which the law in effect before 1935 amendments provided they should receive, then and in that case said amendments to said Miller Act as so construed would be in violation of Section 2 of Article 2 and of Section 14 of Article 2 of the Illinois Constitution and of the Fifth Amendment to and of Section 10 of Article 1 (first paragraph) of the
58 United States Constitution and be invalid and unconstitutional (1) as an attempt to take away vested rights and to take property without due process of law, and (2) as an attempt to impair obligations of contracts. As herein set forth, under the laws and rules applying to statutory construction, it is submitted and contended by plaintiffs that the language of said amendment of 1935 does not support or justify any such retroactive or retrospective construction.

Paragraph 35. Forasmuch, therefore, as plaintiffs are without remedy in the premises in a court of law and have an adequate remedy herein and can have adequate relief only in a court of equity, and in

order to avoid a multiplicity of actions and to the end that defendants be required to answer the matters and things in the complaint alleged, but not under oath (answer under oath of each defendant being expressly waived) plaintiffs therefore pray

(a) That defendant Board of Education of the City of Chicago and defendants, the members thereof, be directed and ordered to rescind the action taken by said Board on June 26, 1935, referring to General Committee of the Board said reports of the Superintendent of Schools of the City of Chicago referred to in the proceedings of said Board as Nos. 35263-A, 35263-N and 35242-D, recommending for voluntary retirement 175 teachers, principals and other educational employees who had before June 26, 1935 made written requests for voluntary retirement and forwarded same to said Superintendent of Schools, including those plaintiffs who, as above set forth, made such written requests, which written requests were never granted or acted upon;

(b) That defendant Board of Education and de-
59 fendants, the members thereof, be directed and ordered to rescind action taken by defendant Board on July 24, 1935, in attempting or pretending to retire compulsorily the plaintiffs Burns, Reynolds and Paterson who prior to June 26, 1935, made written requests for such voluntary retirement and delivered same to said Superintendent of Schools, said three plaintiffs being each named in one of said reports of the Superintendent of Schools so referred to in the proceedings of said defendant Board as Nos. 35263-A and 35263-N;

(c) That defendant Board and defendants, the members thereof, be directed and ordered to take

such necessary action upon said reports of the Superintendent of Schools so designated as Nos. 35263-A, 35263-N and 35242-D, as shall result in retiring upon their written requests those plaintiffs herein who had prior to June 26, 1935, made written requests for voluntary retirement through said Superintendent and as shall, as of a date in June, 1935, subsequent in each case to said written request so made and not later than June 28, 1935, approve of and accept such written requests and recognize the voluntary retirement of said three plaintiffs and each of them, pursuant to Section 3 of the Miller Act as same was in force and effect prior to July 11, 1935;

(d) That the Court forthwith grant a provisional or preliminary writ of injunction directed to defendant Board of Education of the City of Chicago and defendants, the several members thereof, their attorneys, solicitors, agents, servants, officers, representatives, and employees restraining them from further enforcing, carrying out or attempting to carry out or enforce said attempted compulsory retirements as of July 24, 1935, of plaintiffs Burns,
60 Reynolds and Paterson, who made said written requests prior to June 26, 1935, which requests were not acted upon by said defendant Board, and compelling said defendant Board and the members thereof to retire said three plaintiffs by voluntary retirement pursuant to provisions of Miller Act in force prior to July 11, 1935, and to pay or cause to be paid to each of plaintiffs, Burns, Reynolds and Paterson respectively the sums of $1200, $1200 and $1100 per annum as retirement allowances under said Miller Act for life, and that on final hearing, said injunction and order be made final;

(e) That defendant Board of Education and defendant McCahey, president thereof, and Landmesser, Secretary thereof, and Edward J. Kelly, Mayor of the City of Chicago, and Robert Upham, Comptroller of said City, and Gustave A. Brand, Treasurer of the City of Chicago and *ex officio* School Treasurer thereof, be directed, ordered and decreed to immediately issue, sign and countersign warrants to the Treasurer of said City, each for the sum of $100 payable to the order of each of several plaintiffs Dodge, Armstrong, Whigam, Cook, Loomis, Morse, Keen, Coddington and Toole, who have been as above set forth severally compulsorily retired under Sections 1 and 2 of the Miller Act as in force and effect prior to July 11, 1935, being for the balance due to each on the two $75.00 payments payable to each on September 20 and October 4, 1935,
61 the aggregate amount of $50.00 only having been paid to each of said plaintiffs by payments made to them on said dates;

(f) That said defendant Board and said defendant McCahey, president thereof, defendant Landmesser, secretary thereof, defendant Kelly, Mayor of said City of Chicago, defendant Upham, Comptroller of said City and defendant Brand, Treasurer of said City and *ex officio* School Treasurer, be ordered, directed and decreed to immediately issue, sign and countersign warrants to the following plaintiffs for amounts as follows: Catherine L. Baird, $80.00; Mary L. M. Corbett, $60.00; George B. McClelland, $70.00; Nellie C. Callahan, $50.00; Caroline M. Dean, $80.00; Lillian F. Dougherty, $70.00; Laura Tierney, $70.00; Nellie T. Woulfe, $50.00; being for the balance due on the aggregate amount of the two pay-

ments due to each on September 20, and October 4, 1935, the aggregate amount of $50.00 only having been paid to each of them by payments made to them on said dates;

(g) That defendant Board of Education and defendant McCahey, president thereof, and defendant Landmesser, secretary thereof, and defendant Kelly, Mayor of Chicago, defendant Upham, Comptroller of Chicago and defendant Brand, Treasurer of Chicago and *ex officio* School Treasurer of said City of Chicago, be ordered, directed and decreed to immediately issue, sign and countersign warrants payable to plaintiffs Paterson, Burns and Reynolds for the following amounts: To plaintiff Paterson, $60.00;
62 to plaintiff Reynolds $70.00 and to plaintiff Burns $70.00, for balance due each on the aggregate amount of the two payments due each on September 20 and October 4, 1935, the aggregate amount of $50.00 only having been paid plaintiffs on said dates.

(h) That defendant Board of Education, defendant McCahey, president thereof, defendant Landmesser, secretary therefor, defendant Kelly, Mayor of said City of Chicago, defendant Upham, Comptroller of said City and defendant Brand, treasurer of said City and *ex officio* School Treasurer, be directed, ordered and decreed to issue, sign and countersign warrants directed to the Treasurer of said City twice monthly during October, November and December, 1935, to each of the plaintiffs herein in the amount of one-twentieth of the retirement allowances which it was provided by the Miller Act, as same was in force and effect before July 11, 1935, should be paid to each of them, said amounts of each

such installment so due to each plaintiff being as follows:

To Dodge, Armstrong, Whigam, Cook, Loomis, Morse, Keen, Coddington and Toole, $75.00; To Baird, $65.00; Corbett, $55.00; McClelland, $60.00; Callahan, $50.00; Dean, $65.00; Dougherty, $60.00; Tierney, $60.00; Woulfe, $50.00; Paterson, $55.00; Reynolds, $60.00; and Burns $60.00;

(i) That defendant Board of Education and defendants, the members thereof, be ordered, directed and decreed in preparing and adopting the annual school budget for the year 1936, to include therein an appropriation and to therein appropriate (for the purposes of paying retirement allowances under said Miller Act to all persons who, including plain-
63 tiffs herein, have been compulsorily retired prior to July 11, 1935 under said Act and all persons who have been voluntarily retired prior to July 11, 1935, and all persons who, prior to July 11, 1935, had met all requirements for voluntary retirement as provided by said Act as in force and effect before July 11, 1935, and had made written requests for such voluntary retirement, which written requests were not passed on or approved by the defendant Board of Education and whom said defendant Board purported or attempted to retire after July 11, 1935, compulsorily under the law as amended, effective July 11, 1935) a sufficient amount to pay all such persons, including plaintiffs, retirement annuities during the year 1936 as provided by said Miller Act so in force before said amendments to said Act of 1935 became effective on July 11, 1935; that is, an amount sufficient to pay to such annuitants so compulsorily retired the amount during said year

of $1500.00 a year each, and to annuitants who voluntarily so retired the amounts applicable under said Act to age at date of retirement, being $1000 to those 65 years of age at date of retirement; $1100.00 to those 66 at date of retirement; $1200.00 to those 67 at date of retirement; $1300.00 to those 68 at date of retirement; $1400.00 to those 69 at date of retirement, and $1500.00 to those 70 years of age and over at date of retirement;

(j) That said defendant Board and defendants, the members of said Board, be ordered, directed and decreed to adopt resolutions in proper form, based upon such annual school budget, including sufficient amounts to pay such retirement allowances for 1936, to all annuitants as in the foregoing paragraphs set forth, certifying to said City of Chicago that said
64 Board of Education requires to be levied for the year 1936 upon equalized assessed value of taxable property in said City a sufficient tax for educational and other purposes, including therein for educational purposes an amount sufficient to pay such amounts to such annuitants and to cause formal demand and direction to be made upon the City Council of said City of Chicago to levy such school taxes based thereon and to authorize and direct the president and secretary of said Board to present and file with said City Council such order and demand by verified copy;

(k) That said defendant Board and said defendants, the members of said Board and said defendant City of Chicago and its officers be ordered, directed and decreed in the future to do all things necessary, make all necessary tax appropriations and tax levies, to sign, countersign and issue warrants

for the payments to said plaintiffs Dodge, Armstrong, Whigam, Cook, Loomis, Morse, Keen, Coddington and Toole of $1500.00 each year for life, and to the following plaintiffs each year for life the following amounts: Baird, $1300.00; Corbett, $1100.00; McClelland, $1200.00; Callahan, $1000.00; Dean, $1300.00; Dougherty, $1200.00; Tierney, $1200.00; Woulfe, $1000.00; Paterson, $1100.00; Reynolds, $1200.00; and Burns, $1200.00;

65 (l) Prays that the Court forthwith grant a provisional or preliminary writ of injunction directed to defendant Board of Education, to defendants, the several members thereof and to each of them, to defendants, the secretary and auditor of the Board of Education and each of them, to defendant City of Chicago, to defendant Mayor thereof, to defendant City Treasurer and *ex officio* School Treasurer, to defendant Comptroller of said City, and each of them, and to the attorneys, solicitors, agents, servants, officers, representatives and employees of defendant Board and of defendant City of Chicago, enjoining and restraining them and each of them from reducing the amount of such annuities for life to the several plaintiffs herein from the several amounts per annum set forth as so due each of them in the last preceding paragraph, or from attempting to so reduce the same, and from interfering with or preventing in any way the payment to each of said plaintiffs of such amount annually and for life to each; and further pray that on final hearing, such injunction and order be made final;

66 (m) That the Court retain jurisdiction of the cause for further action, as may or shall be desirable or necessary for fully carrying out the orders

of court, and to give complete remedy in the premises to plaintiffs herein;

(n) For such other and further relief of a similar nature or different relief as equity may require or to your Honor shall seem meet.

Signatures of plaintiffs and of Allan J. Carter, their attorney.

Affidavit of Chester C. Dodge, James E. Armstrong, Genevieve Cook, Mary L. M. Corbett, George B. McClelland, Nellie C. Callahan, Archibald O. Coddington and Frank L. Morse, on their respective oaths, that they are plaintiffs, that they have read or heard read the Complaint on their behalf, are familiar with the contents thereof and matters
67 and things therein set forth and that said Complaint and contents thereof and matters and things therein are true in substance and in fact, except as to such matters and things as are therein stated to be on information and belief, and as to such matters and things and allegations so in said Complaint stated to be on information and belief, they and each of them are so informed and believe same to be true.

Signed by said Dodge, Armstrong, Cook, Corbett, McClelland, Callahan, Coddington and Morse, sworn to by them on October 4, 1935.

EXHIBITS ATTACHED TO COMPLAINT

68 EXHIBIT "A".

(Herein set forth in full)

ORIGINAL MILLER ACT, EFFECTIVE May 19, 1926.

An Act to provide for the compulsory retirement of teachers, principals, district superintendents and assistant superintendents, and the payment of retirement annuities.

Be it enacted by the People of the State of Illinois represented in the general assembly:

Section 1. In every city in this State having a population exceeding 250,000 inhabitants, the board of education of such city shall retire from active service on February 1 and August 1 of each year, all teachers, principals, district superintendents, and assistant superintendents in the public schools of such city in accordance with the following schedule:

(a) In the year 1926 all teachers, principals, district superintendents, and assistant superintendents seventy-five or more years of age, shall be retired from active service.

(b) In the year 1927 all teachers, principals, district superintendents, and assistant superintendents seventy-four or more years of age, shall be retired from active service.

(c) In the year 1928 all teachers, principals, district superintendents, and assistant superintendents

seventy-three or more years of age, shall be retired from active service.

(d) In the year 1929 all teachers, principals, district superintendents, and assistant superintendents seventy-two or more years of age, shall be retired from active service.

(e) In the year 1930 and in each and every year thereafter, all teachers, principals, district superintendents, and assistant superintendents, seventy or more years of age, shall be retired from active service.

Sec. 2. Each person so retired from active service who served in the public schools of such city for twenty or more years prior to such retirement shall be paid the sum of fifteen hundred dollars ($1,500.00) annually and for life from the date of such retirement from the money derived from the general tax levy for educational purposes: Provided, that any teacher, principal, district superintendent, or assistant superintendent so retired and receiving such annuity shall be subject to the call of the superintendent of schools in such city for consultation and advisory service: And, provided further, that nothing in this Act contained shall in any way impair or prejudice any rights of a teacher, principal, district superintendent, or assistant superintendent so retired to annuity under other statutory provisions concerning any teachers' pension fund, or teachers' pension and retirement fund, established in accordance with the provisions of any statute of this State; and shall not repeal or modify any other such statutory provisions.

69 EXHIBIT "B".

RECOMMENDATION OF SUPERINTENDENT OF SCHOOLS.

(from official printed copy of proceedings of Board of Education of City of Chicago.)

April 8 972 1925
(11263)

COMPULSORY RETIREMENT OF EMPLOYES IN EDUCATION DEPARTMENT

I respectfully recommend that the Board of Education approve of the proposition to secure from the General Assembly of the State of Illinois the enactment of a law authorizing the Board of Education to provide for the compulsory retirement of employes in the Education Department upon reaching the age of 70 years, and also to pay annually to each such person during the remainder of his life the sum of $1,500.

Reasons: Under the provisions of the Teachers' Tenure of Office Act, principals and teachers in Chicago have been continued in service many years past the age when they can reasonably be expected to render the most efficient service. Consideration of the fact that they have devoted all the years of their adult life to public service, and also that in the past no policy of compulsory retirement age has been established, has influenced the executive officials and the Board of Education to retain in service elderly principals and teachers who do not voluntarily request retirement under the provisions of the Teachers' Pension and Retirement Fund.

Experience in various lines of human endeavor have demonstrated that there is an age beyond which it is impossible to retain the physical and mental vigor necessary to the performance of efficient, progressively improving service. This fact has been recognized in the management of most enterprises. It is more generally recognized in other lines than in the teaching profession; but even in teaching many boards of education throughout the country accept the principle and conduct their affairs accordingly.

There are now in the service of the Board of Education many persons who have passed the age of 70 years. Infirmity has overtaken some of these, and it would seem that considerations of justice to the children of the schools require that they be replaced by younger persons.

Attached hereto is a copy of a tentative bill for an act by the General Assembly, embodying the plan above recommended. It is provided that this plan shall be put in effect gradually in order that persons affected may have notice and be able to make their preparations accordingly.

A Bill. For An Act to provide for the compulsory retirement of teachers and the payment of retirement annuities.

Be it enacted by the people of the State of Illinois, represented in the General Assembly.

Section 1. In every city in this State having a population exceeding 250,000 inhabitants, the Board of Education shall provide for the compulsory retirement on February 1 and August 1 of each year

of all teachers, principals, district superintendents, assistant superintendents, members of the board of examiners, and the superintendent of schools in the public schools of such city, who, during the half year immediately preceding, have reached the age of 70 years. Each person so retired who has served in the public schools of such city for twenty
70 or more years shall be paid a service annuity of $1,500 annually and for life from the money derived from the general tax levy for educational purposes.

Section 2. Nothing in this Act shall in any way impair or prejudice any rights a person retired in accordance with the provisions of this Act may be entitled to under the provisions of any teachers' pension fund, or teachers' pension and retirement fund.

Section 3. The provisions of this Act shall become effective in accordance with the following schedule: In 1926 all persons at that time 75 or more years of age coming under the provisions of this Act shall be retired; in 1927, all persons at that time 74 years or more of age, coming under the provisions of this Act shall be retired; in 1928, all persons at that time 73 or more years of age coming under the provisions of this Act shall be retired; in 1929, all persons at that time 72 or more years of age coming under the provisions of this Act shall be retired; in 1930, the full provisions of this Act shall become effective.

71 (April 8, 1925 Page 796)

The foregoing Report No. 11263 was on motion of Mrs. Hefferan approved and adopted by vote on roll call, nine yeas, no nays.

72 EXHIBIT "C-1".

RECOMENDATION OF SUPERINTENDENT OF SCHOOLS.

(from official printed copy of proceedings of Board of Education of City of Chicago)

November 25 469 1925

(13165) "Amendment to the Rules—Referred.

I beg leave to recommend the following amendment to the rules for your consideration:

EMERITUS SERVICE"

Recites that the laws of the State provide for appointments of teachers and principals after probationary period of three years becoming permanent subject to rules of Board of Education concerning conduct and efficiency and subject to removal for cause.

Recites that the laws provide that said Board shall exercise all powers "requisite for the proper maintenance and fullest development of an efficient public school system." Recites that it is generally recognized that at about age 70 there is usually a letting down of vigor and mental initiative and ambition.

Recites that superintendents, examiners, assistant superintendents, district superintendents, supervisors, directors, principals, teachers, etc., who have faithfully and efficiently served for years and have acquired experience are of continued value to schools.

"Be it Resolved that the rules of the Board of Education of the City of Chicago be and the same

are hereby amended by adding a new article to be known as Article 7A, Chapter IV, and to read as follows:"

Section 1 provides that there is thereby created a branch of the educational service to be known as Emeritus Service to which all members of teaching force, including teachers, principals, directors, superintendents and examiners, except as hereinabove provided, shall be assigned upon respectively attaining age 70. Hereafter no member of teaching force shall be continued in class room or supervisory duties who shall be more than 70 years of age;

Section 2 provides that it should be the duty of the Superintendent on January 1 and July 1 in each year, or as soon thereafter as possible to report to the Board in writing names of persons of teaching force who have or will have attained age 70 on February 1 or August 1 next ensuing and that he shall recommend (except in cases where charges should be preferred) the retirement of such persons from regular class room or supervisory service and their assignment to Emeritus Service to be subject to the call of the Superintendent of Schools or the Board for consultation, advice and such other service as may from time to time be required.

Section 3—Persons so transferred to Emeritus Service to be paid annually during the continuance thereof a sum equal to one-half of the average salary received by such person during the last ten years preceding transfer, but no person so transferred to receive less than $1500.00 nor more than $2500.00. Referred to Committees on Rules and Finance for consideration in joint meeting.

73 EXHIBIT "C-2."

(from official printed copy of proceedings of Board of Education of City of Chicago)

December 9, 561 1925

* * *

JOINT COMMITTEE.

Mr. Byrne, Chairman of the Joint Committee on Finance and Rules reported the following:

(13398) Amendment to the Rules—Emeritus Service—Concur

Joint Committee on Finance and Rules reported careful consideration to Report 13165 referred to it, which recommends amendment to the rules creating a branch of the educational service of the Board to be known as "Emeritus Service" and recommends concurrence therein.

In connection with said Report, Mr. Byrne presented an amendment as follows:

(A-13398) Section 1 as amended excluded the Superintendent of Schools and added a proviso that such assignment should be made only in cases where the person has been in active and continuous service in the public schools of the City of Chicago "for at least twenty years prior to such amendment."

The adoption of the amendment was moved and seconded and passed on roll call by a vote of 8 to 1. The adoption of the report as amended was moved and seconded and passed on roll call by a vote of 8 to 1.

74 EXHIBIT "D".

(Copy of Opinion of Appellate Court, First District, filed **Feb.28.1928** in the following case:)

No. 32497

JAMES E. ARMSTRONG, ET AL.,
Appellants,
vs.
CITY OF CHICAGO,
BOARD OF EDUCATION OF
CITY OF CHICAGO, ET AL.,
Appellees.
} Appeal from Circuit Court of Cook County.

MR. JUSTICE GRIDLEY DELIVERED OPINION OF THE COURT:

Appeal from decree of Circuit Court of Cook County entered October 8, 1926, wherein the Court after hearing, dismissed complainants' original bill for want of equity. Complainants sought to enjoin the enforcement of certain rules adopted by the Board of Education known as "Emeritus Service" wherein it was provided *inter alia* "Hereafter no member of the teaching force shall be continued in class room or supervisory duties who shall be more than seventy years of age."

At the time of filing the bill two complainants were 70 and one 73 years old. Two had served as principals or teachers for more than 20 years and one as a teacher for nearly that long. All were performing their duties.

An appeal was taken to the Supreme Court and transferred to the Appellate Court. The Supreme

Court held it had no jurisdiction on the appeal. *Armstrong* v. *City of Chicago,* 328 Ill. 427.

75 Bill filed on behalf of all teachers and principals who desire to join. Alleges that each complainant is resident, voter and taxpayer, and their positions in the Chicago schools; that each has complied with the rules of the Board concerning conduct and efficiency and there is no cause for removal; no charges have been made, and under the statutes their status "should be determined by merit only" and that each of their appointments "has become permanent" subject to rules of Board concerning conduct and efficiency and subject to removal for cause in the manner provided by Section 161 of the Schools Act.

The Opinion then sets forth the resolution containing the rule as to Emeritus Service as amended (See Exhibits "C-1" and "C-2", Rec. 72, 73; Abst. 54, 56).

76 Bill alleges that the Board has announced that it will pay to teachers to be placed in such Emeritus Service $65,000.00 for the current year; that the Board has concurred in a report naming 74 principals and teachers, including complainants, who will be placed in such service on February 1 and has announced that it will select persons to fill the positions of the persons so named.

77 Bill alleges notice to complainants and other persons of their retirement to Emeritus Service and alleges that the proposed action will cause unlawful and unconstitutional diversion of money raised by taxes; will deprive complainants of property without due process of law; alleges that the rules are arbitrary, unreasonable and void and in violation of the State

and Federal Constitutions, and that their enforcement will result in a multiplicity of suits and that complainants have no adequate remedy at law.

Bill prays for an injunction restraining the defendants from enforcing or attempting to enforce the rules as against the complainants and from transferring them to Emeritus Service.

The Opinion then refers to the supplemental bill filed on behalf of complainants seeking an injunction directing the Board of Education and the Superintendent of Schools to restore complainants to their former status and to enjoin them from thereafter retiring complainants and to enjoin the Board
78 from interfering with the complainants in their positions and the performance of their duties as held by them at the time of filing their original bill. The Opinion then refers to the proceedings had in the lower court and to the testimony and to the evidence as to complainants having been removed from their class room or supervisory duties and those positions having been taken by others, and that complainants had not been requested to do much in
79 connection with their school work since their transfer to Emeritus Service. The Court then refers to the passage of the "Miller Act" by both Houses of the Legislature before adjournment in June, 1925, and that it was not signed and did not become a law until May, 1926; that while the Act was pending
80 before the Legislature, the Board of Education was active in urging its passage and that the Board, believing that the Act had failed to become a law, passed the rules in question in December, 1925.

The provisions of the Miller Act applicable to Cities with more than 250,000 inhabitants and pro-

viding for compulsory retirement from active service of teachers, principals, etc., in the public schools of such cities in accordance with the schedule of years and ages therein set forth (See Exhibit "A", Rec. 68; Abst. 49) and then quotes in full sec-
81 tion 2 of the Miller Act (See Exhibit "A"); that the Act was amended by adding Section 3 effective July, 1927, to provide for voluntary retirement upon written request of teachers, principals, etc., 65 or more years of age and the payment of annuities for life from the moneys derived from the general tax levy for educational purposes.

Sets forth the amendments of the School Act known as the Otis Amendments amending in 1917 Sections 128 to 139 and 161, which went into effect on April 20, 1917, and the decision of the Supreme Court April 19, 1917, of the case of *People ex rel.*
82 *Fursman* v. *City of Chicago,* 278 Ill. 318, quoting from that decision at page 23 partly as follows: "The board has no power to make contracts for the employment of teachers to extend beyond the ensuing year. * * * The board has the absolute right to decline to employ or to re-employ any applicant for any reason whatever or for no reason at all. * * *"

It was then held in the opinion of the Appellate Court that in passing the Otis Amendments the intention of the Legislature was to secure for teachers and principals in cities of a population of 100,000 or more "a permanency in tenure of their positions and that they be not required to make yearly contracts with boards of education in such cities."

83 Then quotes Sections 130, 131, 137, 138, 139 and 161 of the School Law as amended.

84 Holds that under said Section 138 as amended, complainants' positions as principals or teachers in the schools had become permanent subject (1) "to the rules of the board concerning conduct and efficiency" and (2) "to removal for cause in the manner provided by Section 161 of this Act". That counsel for defendants admitted that the only fact militating against the retention of their positions by the complainants was that they were 70 or more years of age and if their assignment to Emeritus Service be considered as a removal (as distinguished from a transfer) the Board of Education did not have sufficient statutory authority to so assign com-
85 plainants, but contended that the complainants were only transferred to "another class of service in the educational department".

Takes up counsel's contention that the permanency of service provided for in Section 138 shall be "subject to the rules of the board concerning conduct and efficiency" and that the amended Sec-
86 tion 139 of the School Law provided that the board should exercise powers requisite or proper for the maintenance and fullest development of an efficient public school system. Takes up counsel's contention that under these provisions the Board of Education had authority to pass the rules in question and to retire complainants and others as a class after reaching 70 years of age. As to this contention, the Court holds that the words "concerning conduct and efficiency" as used clearly refer to the conduct and efficiency of an individual principal or teacher; but that it was not the legislative intent that the Board might retire and in effect remove
87 all the principals or teachers "of a class, solely

upon the ground that each individual in that class, because of reaching a certain age, should be presumed to be inefficient, without charges being preferred as to the inefficiency of each individual, * * *". Concludes that the Circuit Court erred in entering decree dismissing the bills for want of equity, reverses the decree and remands to the Circuit Court "with directions that it enter a decree directing the Board of Education to restore complainants to their respective positions, as principals and teachers in the Chicago public schools, as of the date of their said retirement or removal therefrom * * * but that their tenure in said positions be subject to the provisions of said 'Miller Act,' as originally in force on May 19, 1926, and as amended on June 24, 1927."

In which opinion BARNES, P. J., and SCANLAN, J., CONCUR.

89 EXHIBIT "E".

AMENDMENT OF 1927 TO THE MILLER ACT.

An Act to add section 3 to and to amend the title of "An act to provide for the compulsory retirement of teachers, principals, district superintendents, and assistant superintendents, and the payment of retirement annuities," approved May 19, 1926.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

SECTION 1. Section 3 is added to "An Act to provide for the compulsory retirement of teachers, principals, district superintendents, and assistant superintendents, and the payment of retirement annuities," approved May 19, 1926, the added section to read as follows:

SECTION 3. All teachers, principals, district superintendents, and assistant superintendents who have served in the public schools of the United States for twenty-five years or more and who have served in the public schools of such city for 15 years immediately prior to retirement under this Act and who are 65 or more years of age and who have not reached the age of compulsory retirement as provided in sections one and two of the last mentioned Act to which this section is added, shall upon their own request be retired from active service and thereafter be paid annuities for life from the moneys derived from the general tax levy for educational purposes. Such annuities shall be paid respectively according to the following table of ages and annuities annually:

Age 65—Ten hundred dollars ($1,000)
Age 66—Eleven hundred dollars ($1,100)
Age 67—Twelve hundred dollars ($1,200)
Age 68—Thirteen hundred dollars ($1,300)
Age 69—Fourteen hundred dollars ($1,400)
Age 70—And thereafter fifteen hundred dollars ($1,500)

And provided that at the age of 65 and any year of age thereafter, the board of education of such city may require a physical or a mental examination of any such teacher, principal, district superintendent or assistant superintendent upon the request of the superintendent of schools of such city and if any such teacher, principal, district superintendent or assistant superintendent be found incapacitated for service after trial as already or hereafter provided by law he shall be retired at the annuity above provided for that age of voluntary retirement.

And provided further, that all such teachers, principals, district superintendents, and assistant superintendents shall be subject to the same conditions as to advisory service as provided for in section 2 of said last mentioned Act to which this Section is added. Nothing contained in this section or in said last mentioned Act to which this section is added shall in any way impair or prejudice any right of a teacher, principal, district superintendent, or assistant superintendent so retired to annuity under other statutory provisions concerning any teachers' pension fund or teachers' pension and retirement fund established in accordance with the provisions of any statute of this State, and the payment to be made under this section or the Act to which it is added shall be in addition to any such annuity.

SECTION 2. The title of said Act is amended to read as follows: "An Act to provide for the compulsory and voluntary retirement of teachers, principals, district superintendents and assistant superintendments, and the payment of retirement annuities." Approved June 24, 1927.

90 EXHIBIT "F".

March 9 (16727) 1262 1927

Retirement Law—Amend—Referred

Superintendent's report to Board of Education concerning the proposed Act to add Section 3 to and to amend the title of "An Act to Provide for the Compulsory Retirement of Teachers," etc., approved May 19, 1926.

He recommends an examination of the Bill and the addressing to the chairman of the committee of education of the House of Representatives and Senate letters commending such features of the Bill as conduce to the improvement of the Chicago public-school service.

Reasons: (1) The retirement provisions of the Miller Act are a temptation to teachers over 60 who have failed in health to continue in the service much longer than heretofore. Average age of resignation heretofore 54.

(2) The amendment will give the schools relief from incapacitated teachers over sixty years of age, without additional cost, as new teachers taking the place of those retiring will begin at lower steps of salary schedule. Therefore, salary of new teachers and pension under amendment would be less than salary of old teacher retiring under amendment.

(3) Taking into consideration total amounts paid at $1500.00 per year for 8½ years, the expectancy at age 70, with $700.00 a year for 14 years, the expectancy at age 60, the Board would save nearly $3,000.00 on teacher retired at age 60, as compared with what they would pay the same teacher should she remain in service until age 70 and then retire. This would not include her salary for teaching for ten years, but simply compares the two pensions.

(4) Exact comparison of all factors is impossible. Takes up then different contingencies and possibilities, and concludes every method adopted for comparison, however, "shows that the cost of the substitute teacher plus the pension paid to the

teacher retired between 60 and 70 years old will be about equal to what the Board would have to pay to the teacher thus retired if she had remained in the service at her full salary up to the age of superannuation."

91 (5) States and one large city that have state superannuation laws have a period of from five to ten years of voluntary retirement just preceding age of superannuation, with a smaller pension.

(6) Amendment would give teachers just and equitable treatment; since without it teachers obliged to retire by failure of health one-half year before compulsory retirement age, would receive only $800.00 from the Chicago Pension Fund after from twenty to fifty years of efficient service, while teacher who could give only one-half year more to a possible 19½ years of service would receive additional pension of $1500.00 a year for the rest of her life. Amendment would correct that objection.

(7) Argument that so many teachers in the sixty's, take advantage of this amendment that it would exhaust the teachers' pension fund is invalid since more teachers in the fifty's will be encouraged by it to continue in service to get the larger pension offered than teachers in the 60's will retire. Teachers in both the 50's and 60's will continue on the average ten years longer in the service and add annually to the Chicago Teachers' Pension Fund, the deductions from their salary.

(8) Provisions in amendment for a physical or mental test for teachers 65 years old or older will be a sufficient safe-guard against their holding on too long.

There follows a copy of the Bill (House Bill No. 130) as it was then being considered in the Legislature to change Section 3 providing for voluntary retirement, and which as then being considered, permitted voluntary retirement of persons who had served in the public schools of the United States twenty-five years or more and of the City fifteen years immediately prior to retirement who were sixty or more years of age (This was changed in the Bill as passed to 65 or more) at an annuity for life of $700.00 if retired at age 60, and $100.00 additional for each additional year of age at retirement to age 65, being $1200 at that age, $1270 at age 66, $1340 at age 67, $1400 at age 68, $1450 at age 69 and $1500 at 70 and thereafter, providing further that at age 65 or thereafter, the Board might require a physical or mental examination and if the person was found incapacitated for service, after trial he or she might "be retired at the annuity provided for his age." The Act contained the same provision as in the Act afterward passed as to persons so retiring remaining subject to advisory service and that nothing in the Act should prejudice the right of such person to an annuity under other statutory provisions concerning the pension fund. Also to amend the title of the Act to include voluntary retirements. It appears at the end of the Report that on motion of Mrs. W. S. Hefferan it was referred to the Special Committee on Legislative Matters and also to the Committee on School Administration.

92 EXHIBIT "G."

(Copy from official printed Proceedings of the Board of Education.)

May 11 1508 1927

(17276) Retirement Law—Amend—Authority to employ Actuary.

The Board by a roll call vote of 9 to 0 adopted and approved recommendation for the employment of a competent firm of actuaries to investigate thoroughly all phases of the proposed House Bill No. 130 to amend the Miller Act by adding Section 3 providing for voluntary retirement.

93 EXHIBIT "H."

May 25 1584 1927

(B-17375) Report from Actuary on Amendment to Retirement Law—Accept and Pay Bill.

Committee reports receipt of report from Henry R. Corbett, Actuary and recommends the acceptance of same and the payment of Mr. Corbett's bill, setting forth report.

94 May 25 1585 1927

Cost to the Board of Education of the Proposed Amendment to the "Miller Law"—Optional retirement ages 65 to 70. At $1000 for life at age 65, $1100 at age 66, increasing $100 per year for each added year of initial age to $1500 as now at age 70.

Three Sources of Gain or Loss.

1—Gain by Replacement of maximum salaries with lower salaries, on account of promotions all down the line until those promoted gradually reach the maximum salary. The amount of these gains has been admirably stated in an exhibit prepared by Mr. James E. Armstrong.

Gain is inevitable.

They do not depend upon the proposed amendment nor even upon the "Miller Law." Each aged teacher will soon give place to a younger one. So the only effect of this amendment is to anticipate by five years or less a gain whch will occur anyhow at age 70.

The gain from this source will be only the use of the money for a few years. A considerable item. Value of it is computed at 4½%.

2—Difference in cost between an immediate smaller annuity and a deferred annuity of $1,500.00 beginning at age 70. The Board would save more by waiting until age 70 as the Miller Law now provides than it would gain by the smaller payments beginning at 65, 66, etc.

NOTE: The amount of annuity at 65 exactly equivalent to a deferred annuity at 70 would be $867 instead of $1000.

The gain from (1) above and the loss from (2) tend to off-set each other. Net result varies from $4195 gain to $1177 loss. Loss will occur in more cases than gain, so net difference to Board will be small. Total net gain or loss through series of years from (1) and (2) combined would be small.

(3) Effect of Proposed Amendment as Compared with Present Miller Law upon regular Teachers' Pension Fund and the Board's contribution thereto.

T-1 "Tendencies"—Amendment will tend to increase or hasten retirements between 65 and 70.

T-2 Will tend to decrease or delay retirements between 55 and 65.

T-3 Present Miller Law tends to decrease or delay retirements between 60 and 70. In the Teachers' Pension fund, retirements before Miller Law enacted show average service 31.6 years, and average age about 57. Retirements since Miller Law show average service 34.2 and average age about 60.

Summary: T-1, T-2 and T-3 have off-set each other somewhat and net loss or gain would probably not be material.

(C-17375) Report of Committee on Legislative Matters.

Special Committee on Legislative Matters reports it is considering House Bill No. 130 providing for an amendment to present retirement law. Recommends that the Board endorse bill providing it is amended so that any persons retired between 65 and 70, because of any physical defects or for other cause, may have the same trial which the statute at present allows in the case of teachers removed for cause. The foregoing report approved and adopted on a roll call by vote of 11 members of the Board to none.

95 EXHIBIT "I."

(Miller Act as amended in 1929)

Title—"An Act to provide for the compulsory and voluntary retirement of teachers, principals, district superintendents and assistant superintendents, and for the voluntary retirement of superintendents of schools and members of the Board of Examiners and for the payment of retirement annuities."

Sec. 1 (Compulsory Retirement) Section 1, as amended, is identical with Section 1 of the original Act. See Sec. 1 as set forth in Exhibit "A" (Rec. 68, Abst. 49).

Sec. 2 (Annuities—Subject to call for advisory service) Section 2, as amended, is identical with section 2 of the original Act. See Sec. 2 as set forth in Exhibit "A" (Rec. 68; Abst. 49).

Sec. 3 was changed to include as eligible for voluntary retirement a member of the Board of Examiners, who had not been included and to change the provisions as to service in the public schools of the city, which had formerly required fifteen years' service continuously up to date of retirement. As amended, all that was required was that there should have been fifteen years service in the ag-
96 gregate within the last twenty years prior to retirement. As amended, provision in Section 3 for voluntary retirement at age seventy and over at an annuity of $1500.00 was omitted.

See Exhibit "E" (Rec. 89; Abst. 62).

97 EXHIBIT "J."

(Amended Miller Act effective July 12, 1935.)

"An Act to amend Sections One and Two and the title of 'An Act to provide for the compulsory and voluntary retirement of teachers, principals, district superintendents and assistant superintendents and for the voluntary retirement of superintendents of school and members of the board of examiners, and for the payment of retirement annuities,' approved May 19, 1926, as subsequently amended, and to repeal Section 3 of said Act.

Be it enacted by the People of the State of Illinois represented in the General Assembly;

Section 1. Sections 1 and 2 of 'An Act to provide for the compulsory and voluntary retirement of teachers, principals, district superintendents and assistant superintendents and for the voluntary retirement of superintendents of school and members of the board of examiners, and for the payment of retirement annuities,' approved May 19, 1926, as amended, are amended to read as follows:

Section 1. In every city in this State having a population exceeding 250,000 inhabitants, the Board of Education of such city, as soon as practical after this law becomes effective, shall retire all teachers, principals, district superintendents and assistant superintendents in the public schools in such city, who are sixty-five or more years of age, and thereafter shall retire all teachers, principals, district superintendents and assistant superintendents in the public schools of such city, on attaining the age of sixty-five years.

Section 2. Each person so retired from service shall be paid the sum of five hundred dollars ($500.00) annually and for life from the date of such retirement from the money derived from the general tax levy for educational purposes. *Provided,* that any teacher, principal, district superintendent, or assistant superintendent so retired and receiving such annuity shall be subject to the call of the superintendent of schools in such city for consultation and advisory service; *And, provided further,* that nothing in this Act contained shall in any way impair or prejudice any rights of a teacher, principal, district superintendent, or assistant superintendent so retired to annuity under other statutory provisions concerning any teachers' pension fund, or teachers' pension and retirement fund, established in accordance with the provisions of any statute of this State.

Section 2. The title of said Act is amended to read as follows: "An Act to provide for the compulsory retirement of teachers, principals, district superintendents and assistant superintendents, and for the payment of retirement annuities."

Section 3. Section 3 of said Act is repealed.

98 EXHIBIT "K."

(Copy from official printed proceedings of the Board)

January 12 587 1927

(16274) Retirement from Emeritus List—Deferred.

Report of superintendent recommending that persons thereinafter named who, according to the rec-

ords, will on February 1, 1927 be 74 or more years old and will have served in the public schools of the City 20 years, be retired

99 (January 12 588 1927)

from active service and "shall be paid the sum of $1,500.00 annually for life, provided they shall be subject to call of the superintendent of schools for consultation and advisory service:" Here follow the names of 14 persons, including that of plaintiff Dodge, and after each name, the date of his or her birth, his or her age on February 1, 1927, and length of service on February 1, 1927, which as to Chester C. Dodge is as follows: "Chester C. Dodge 3-16-1852 74 yrs. 10 mos. 45 yrs."

Following the list of names are set forth the "Reasons". That on May 19, 1926, the Miller Act was signed by the Governor. Sets forth in substance the provisions of that Act as to compulsory retirement in the year 1927 at age 74 and that persons so retired who served in the schools of said city twenty or more years prior thereto "shall be paid the sum of $1,500.00 annually, and for life" from the date of such retirement, from the money derived from the general tax levy for educational purposes.

Followed by statement of the two provisos in the Miller Act and the recital that the persons named above had been transferred to "Emeritus Service". Action on said Report, as there appears, was deferred until the next meeting.

100 EXHIBIT "L".

(Copy from official printed proceedings of the Board)

January 23 748 1929

(23168) Retirement from Active Service.

Recommendation of Superintendent that in accordance with provisions of Teachers' Retirement Law (Miller Law) persons whose names are thereafter set forth who have attained age 72 and have served in the Chicago public schools for more than twenty years, "be retired from active service, and that said persons be paid the annuity provided by law in such case, to date from the school month of February, 1929:"

Then follows a list of names of 4 persons, with the school and position of each, the date of birth of each, and length of Chicago service of each, including the name of plaintiff Armstrong, as to whom the following is shown:

"Armstrong, James E.
Englewood High School (Principal) 11-30-55
44 yrs."

101-102 EXHIBIT "M".

103 35263-A Voluntary Retirement of Teachers

Recommendation of Superintendent of Schools to Board of Education "that in accordance with their written requests, the following named members of the teaching force be retired from active service pursuant to the provisions of the Teachers' Retirement Law, effective June 28, 1935:"

Then follow the names of eighty persons and after the name of each, his or her school, with the designation of "principal" if a principal, followed in each case by date of birth and period of Chicago service, showing in each case the month and year when such service commenced and terminated, and if not continuous, the month and year when service recommenced and terminated, followed by number of years of such service. The shortest period of service as to any of such persons so shown in number of years being 25 and the longest 50 years. The name of plaintiff Burns was included in this list, as to whom the Report shows:

"Burns, Elmer E. Austin High Feb. 22, 1868
Jan. 1905-June 1935 30"

104 Said Report concludes with typewritten or mimeographed words, as follows:

"Respectfully submitted,
Wm. J. Bogan,
Superintendent of Schools

Approved as to charge:
H. H. Brackett, Auditor.
Chicago, June 12, 1935."

105 EXHIBIT "N".

(Copy from official printed proceedings of the Board)

June 26 1408 1935

(A-35263) Voluntary Retirement of Teachers—Referred

There then follows the recommendation for voluntary retirement of the Superintendent of Schools in

the same language as above in Exhibit "M" (Rec. 101; Abst. 75) followed by the names of the same persons in Exhibit "M" (the order of same changed slightly) giving the same data as to each as in Exhibit "M", including the data as to plaintiff Elmer E. Burns.

106 At the bottom of the Report it is shown that on motion of Mr. Buehler the Report was referred to the General Committee.

107 EXHIBIT "O-1".

(35263-N) Voluntary Retirement of Teachers

Recommendation by Superintendent of Schools to the Board of Education recommending that in accordance with their written requests the persons thereinafter named be retired from active service pursuant to the provisions of the Teachers' Retirement Law effective on the date herein specified—June 28, 1935, except as to one, as to whom it was to be effective June 29, 1935. There follow the names of 92 persons, giving after the name of each person the school in which he or she taught and the designation "principal" if a principal, followed in each case by date of birth, and period of Chicago service, giving month and year of commencement and termination of same, and where not continuous, month and year of recommencement and termination, followed in each case by length of service in years.

108 The names of plaintiffs Paterson and Reynolds were included in this list, as to whom the Report shows:

"Paterson, Archibald Englewood High Aug. 7, 1868 Jan. 1908-June 1935 27"

* * * * *

"Reynolds, Azile B. (prin.) Armstrong May 18, 1868 Feb. 1898-June 1935 37"

110 Following list of names and data are the following typewritten mimeographed words:

"Respectfully submitted,

William J. Bogan,
Superintendent of Schools

Approved as to charge:
H. H. Brackett, Auditor

Prepared by: Robert D. Gregg

Special Assistant to Superintendent of Schools
Chicago, June 26, 1935."

111 EXHIBIT "O-2".

(Copy from official printed proceedings of Board)

June 26 1412 1935

(N-35263) Voluntary Retirement of Teachers—Referred

There then follows the recommendation for voluntary retirement of the Superintendent of Schools in the same language as above in Exhibit "O-1" (Rec. 107; Abst. 77) followed by the names of the same

persons in Exhibit "O-1", giving the same data as to each as in Exhibit "O-1", including the data as to plaintiffs Archibald Paterson and Azile B. Reynolds, which is also the same as in Exhibit "O-1" (Rec. 107; Abst. 77).

112 At the bottom of the Report it is shown that on motion of Mr. Buehler, the Report was referred to the General Committee.

113 EXHIBIT "P".

(35242-D) Recommendation of the Superintendent to the Board of Education, dated June 26, 1935, showing applications of three persons therein named for voluntary retirement, which "have been presented since the preparation of Reports Nos. 35263-A and 35263-N now pending before you". Then follow the names of three persons with information as to each—effective date of proposed retirement in June 1935, date of birth, period of Chicago service and number of years of Chicago service. Followed by typewritten signature of Wm. J. Bogan, Supt. of Schools, and again dated June 26, 1935.

114 EXHIBIT "Q".

(Copy from official printed proceedings of Board)

June 26 1402 1935

(D-35242) Request for Voluntary Retirement under Teachers' Retirement Law—Referred

The secretary presented the following communication from the Superintendent of Schools: There

then follows the communication, being recommendation for voluntary retirement set forth in Exhibit "P" (Rec. 113; Abst. 79) in the same words and
115 figures, which Report it appears was on motion of Mr. Buehler referred to the General Committee.

116 EXHIBIT "R".

(Copy from official printed proceedings of Board)
Recessed Regular Meeting, Thursday, Jan. 17, 1935
(Page 519)

(34751) Annual School Budget—1935—Adopted

Report from Special Budget Committee that it has considered the annual school budget for 1935 submitted in tentative form and made various changes, and recommends that same, as amended, changed and presented, be adopted, "as the Annual School Budget of the Board of Education of the City of Chicago for the Fiscal Year 1935." That same was adopted by roll call vote of 10 in favor, none against, followed by the Annual School Budget as adopted. Recites that there has been a public hearing after notice by publication.

Section 1 provides among other things

117 (January 17 520 1935)

that the budget sets forth estimates of taxes to be received from levies of prior years, being net estimates after deducting amounts to cover loss and cost of collection, detailed estimates of all taxes to be levied for 1935 and of all current revenues to be derived from sources other than taxation.

Section 2 provides that the amounts hereinafter set forth or so much as may be authorized by law are hereby appropriated for educational purposes and other purposes as therein set forth.

* * * * *

Section 4 provides that no employee should have the right to demand continuous employment and compensation by reason of the appropriation (of salaries and wages) if it becomes necessary to lay him off on account of lack of work or lack of funds.

Section 5 sets forth certain deductions to be made from salaries, with the provision that such deductions shall not be applied in case of any employee whose basic rate of compensation for full time is less than $100 per month.

Section 6 states the estimates of current assets and liabilities as of January 1, 1935, the amounts of such estimated revenue of 1935 available for appropriation, and amounts appropriated, and objects and purposes.

118 January 17 531 1935

Sets forth under various headings a summary of items appropriated, including the following:
"Fixed Charges:

2 Retirements (Miller Law) .....$1,125,000.00"

119 January 17 534 1935

Also sets forth summarized statement of detailed items therein, including

"Other Purposes:

Y—Retirements—Miller Law .....$1,125,000.00"

Total amount appropriated for 1935 shown at bottom of page, $187,270,890.97.

120 January 17 539 1935

Under "Debt Service and Fixed Charges (1)" is the following:

"Y-400 Fixed Charges:

Teachers' pensions

* * * * *

Retirements—Miller Law $1,125,000.00"

121 EXHIBIT "S".

(Copy from official printed proceedings of Board)

January 17 951 1935

(34752) Order, Demand and Direction—Tax Levy for the year 1935—Adopted.

Resolution showing that it is hereby certified by the Board of Education of the City of Chicago that it requires to be levied for the year 1935 upon the equalized assessed value of taxable property in the City of Chicago a school tax for educational purposes and other purposes therein stated, as follows:

Followed by specific general items for the specific amounts as shown, including

"For educational purposes .....$43,000,000.00"

as said purposes and amounts are further set forth

in the Annual School Budget of the Board of Education for the fiscal year 1935.

Recites the adoption of that budget, which is herein referred to and made a part hereof, and which it is therein stated is on file in the office of the secretary of the Board.

Also resolved that formal demand and direction be made upon the City Council to levy the aforesaid taxes for the year 1935.

Also resolved that the president and secretary of the Board are hereby authorized and directed to present and file with the City Council of the City of Chicago "This Order, Demand and Direction, by certified copy thereof."

It is then shown that the resolution was adopted on roll call vote, 10 in favor, none against.

122 EXHIBIT "T".

Pay Roll Sub-Warrant on the face of which is the following:

"(P. R. B. No. 3-A)

PAY ROLL SUB-WARRANT

BOARD OF EDUCATION, CITY OF CHICAGO

270897

Date and sub-number

To the of

Treasurer the City of Chicago Sept. 20 '35

Drawn Against General Warrant No. 64

Pay to the order of James E. Armstrong

Exactly Twenty Five Dollars and 00 Cents....$25.00

and charge the same to the Board of Education, Teachers' Pay Roll Account.

Board of Education,
City of Chicago,
By J. B. McCahey,
President.

Verified:
Br

By F. H. Landmesser,
Secy."

---

and on the face of which also appears, written across the left end thereof, the following:

"Countersigned:

Edward J. Kelly,
Mayor of City of Chicago,

R. B. Upham,
Comptroller of City of Chicago."

On the back thereof appears the following:

"FOR ENDORSEMENT OF PAYEE.

The person to whom this check is payable must endorse it PERSONALLY, excepting where power of attorney is on file with the Payroll Bureau.

Each Endorser Hereof Warrants as follows:

(a) That the payee was living at the time of such endorsement.

(b) If legally acting for or on behalf of annuitant (in the capacity of guardian, conservator, attorney-in-fact or otherwise) THAT such person is still living and entitled to this payment. Cashing

this check AFTER THE DEATH of the beneficiary will subject the offender to Criminal Prosecution.

(Endorse in Ink)

....

....

Address Address"

123 EXHIBIT "U".

"(P. R. B. No. 2)

BOARD OF EDUCATION PAYROLL BUREAU
228 North LaSalle Street,
Chicago, Illinois

Order for Next Annuity Payment.

Warrant No. .....

Mailed .....

(Leave the above two lines blank)

READ INSTRUCTIONS BEFORE SIGNING: This order properly filled out and mailed to the Payroll Bureau, Board of Education, Chicago, in the enclosed, self-addressed envelope, will constitute instructions to mail to you the warrant due on your annuity. If it is not properly filled out and mailed to this office, delay in mailing your warrant will result.

IMPORTANT NOTICE: This order must not be signed or mailed before Sep 27 1935.

This certifies that I am on the retirement roll of the Board of Education, City of Chicago, and that

my signature was affixed below on the ..... day of ..... 19.....

Signed .....,
Annuitant.

Address .....
Street City State

I hereby certify that I personally know the person whose name is subscribed above and witnessed such person affix signature.

Signed .....
Witness

Address .....
Street City State"

In the right-hand corner, reading up, is the following:

"Oct—4 1935"

124 EXHIBIT "V".

(envelope)

P. R. B. No. 4

(Place)
(Stamp)
(Here)

From .....

.....

BOARD OF EDUCATION
228 N. La Salle St.,
Chicago, Ill.

PAYROLL BUREAU

125 EXHIBIT "W".

September 28, 1935

Board of Education
228 North La Salle Street,
Chicago, Illinois.

Receipt is acknowledged of warrant to my order, dated September 20, 1935, drawn on the Treasurer of the City of Chicago by the Board of Education, in the amount of $25.00.

This is accepted to apply on my annuity payment of $75.00, one-twentieth of the annuity provided for by the Law of Illinois in force at the date of my retirement and which Law it is claimed by me is applicable in my case.

I therefore respectfully demand—

(1) Immediate payment of $50.00, the balance now due me;

(2) That future payments be made to me in the amounts heretofore paid, that is, of $75.00 twice monthly.

The enclosed "Order for next annuity payment" has been filled out by me in order to furnish to the Board the information requested, and constitutes no waiver of any claims and demands as above stated.

Respectfully yours,

Chester C. Dodge.

126 EXHIBIT "X".

"(P. R. B. No. 3-A)

PAY ROLL SUB-WARRANT

BOARD OF EDUCATION, CITY OF CHICAGO

To the Treasurer of the City of Chicago

Date and Sub-number

272992
Oct. 4 '35

Drawn against General Warrant No. 68

Pay to the order of.....James E. Armstrong Exactly Twenty Five Dollars and 00 Cents....$25.00 and charge the same to the Board of Education, Teachers' Pay Roll Account.

Board of Education,
City of Chicago,
By J. B. McCahey,
President.

Verified:
Br.

By F. H. Landmesser,
Secy."

---

and on the face of which also appears, written across the left end thereof, the following:

"Countersigned:
Edward J. Kelly,
Mayor of City of Chicago.

R. B. Upham,
Comptroller of City of Chicago."

On the back thereof appears the following:

"FOR ENDORSEMENT OF PAYEE.

The person to whom this check is payable must endorse it PERSONALLY, excepting where power of attorney is on file with the Payroll Bureau.

Each Endorser Hereof Warrants as follows:

(a) That the payee was living at the time of such endorsement.

(b) If legally acting for or on behalf of annuitant (in the capacity of guardian, conservator, attorney-in-fact or otherwise) THAT such person is still living and entitled to this payment.

Cashing this check AFTER THE DEATH of the beneficiary will subject the offender to CRIMINAL PROSECUTION.

(Endorse in Ink)

.....

.....

Address

.....

.....

Address"

128-130 Summons issued October 8, 1935 by Clerk of the Superior Court naming all defendants, answerable on the first Monday of November, 1935 or when served on any defendant less than twenty days of said date, on the third Monday of November, 1935.

Return shows service on all defendants.

132 Order, October 9, 1935, setting case for hearing November 18, 1935.

134 Notice by attorney for plaintiffs for October 9 of motion to set case for hearing.

136 Appearance filed October 10 by Barnet Hodes, Corporation Counsel of City of Chicago, on behalf of defendants Edward J. Kelly, Mayor, Gustave A. Brand, City Treasurer, and Robert Upham, Comptroller.

138 Appearance filed October 16, 1935, by Richard S. Folsom, attorney, on behalf of defendants Board of Education of the City of Chicago, James B. McCahey, President and Member; Ernst Buehler, Vice-President and Member; Irwin Walker, Paul Drymalski, Charles W. Fry, Joseph P. Savage, William D. McJunkin, Harry W. Solomon, Joseph J. Salat, William H. Bied, Mrs. W. S. Hefferan, Members of said Board; Frank H. Landmesser, Secretary of the Board, and Harry H. Brackett, Auditor of said Board.

140 Notice filed by attorney for plaintiffs November 12, 1935, of motion for order granting leave to Grace L. Ackley and more than 800 others to file Intervening Petition and become additional and intervening plaintiffs and parties to this suit.

142 Order entered November 12, 1935, granting leave to Grace L. Ackley and 861 others to file Intervening Petition and making each of them an additional intervening plaintiff with like effect as if each of them had been joined as one of the original plaintiffs herein.

144 Petition and Intervening Complaint of Grace L. Ackley and more than 800 other teachers, principals and other educational employees hereinafter named to join in the Complaint filed herein as Intervening plaintiffs, filed November 12, 1935, alleges:

Paragraph 1—That pursuant to leave granted by order of court given, Grace L. Ackley and more than 800 others hereinafter named, by Allan J. Carter, their attorney, enter the appearance of each as Intervening Plaintiffs. Names of said Intervening Plaintiffs are set forth in Paragraphs 2 to 7 hereof—that is to say:

145 Paragraph 2—The following Intervening Plaintiffs have been compulsorily retired under said Miller Act at an annuity as therein provided for to each of $1500.00 a year for life: Grace L. Ackley, John E. Adams, L. F. Affhauser, Mary D. Ahearn, Laura E. Ashleman, Jane S. Atwater, Emma V. Bailey, Mary E. Bates, Frances E. Benson, Ralph E. Blount, Moritz Boehm, Anna R. Bonfield, Mary Bonfield, Susan Bonfield, Mary DeL. Bowen, Mary G. Brants, Benjamin F. Buck, Anna R. Burke, Mary Burke, J. Elmer Cable, Wickliffe I. Cable, A. Esther Camfield, W. H. Campbell, Simon F. Casey, Rose Colby Caverly, Cora Caverno, Nora A. Clark, George M. Clayberg, Novella M. Close, Charles C. Cobb, Walter H. Comstock, Charles A. Cook, Mary E. Coppersmith, Mary A. Crotty, Jeannette C. Cummings, Maud Cutler, George W. Davis, Pauline O. Eckstorm, Jay C. Edwards, Margaret S. Fitch, Mary A. Forkin, Josephine C. Ford, Martha Foote, Oliver D. Frederick, Christopher Friese, Anna R. Gallagher, Etta Q. Gee, May Gifford, Jennie E.

Goodrich, Eva Griswold, Alice W. Gwinn, Marcella R. Hanlon, Walter R. Hatfield, James H. Henry, George C. Heritage, Mary B. Herrick, Nano T. Hickey, Mary E. Higbee, Edward E. Hill, Morgan G. Hogge, Sarah E. Holmes, C. Lauron Hooper, William L. Ilgen, Martha J. Imlah, Ada Byron Johnson, John A. Johnson, C. Elizabeth Jones, Winifred E. Jones, Margaret E. Keegan, Arabella Kennedy, Elmer L. Kletzing, Josiah F. Kletzing, Anna Lacy, Abby E. Lane, Samuel Leland, John L. Lewis, Charles D. Lowry, Fannie E. Lynch, Mary Ellen Lynch, Hattie L. Lynn, Margaret MacDonald, Emma March, Mary R. Marsh, Lillian Maxey, John W. May, Clara H. McFarlin, Oscar L. McMurray, Samuel R. Meck, Carl O. Meier, John C. Miller, Joseph F. Morse, Leonora Morton, Rose Mullay, Agnes A. Nelson, Fred R. Nichols, Minnie K. Nicolai, John S. Nicoll, Robert Nightingale, Elizabeth A. Noel, Catherine Norton, Marie Therese Norton, Herman S. Pepoon, Charles H. Perrine, Frederick W. Plapp, Edward Prosser, Mary I. Purer, Fanny S. Reider, Katherine A. Riordan, Florence Prouty Robinson, Margaret M. Royce, Carrie H. Ruarc, Au-
146 gusta F. Schelbach, Inger M. Schjoldager, Ada B. Sempill, Ida A. Shaver, William H. Shoemaker, Lucy S. Silke, Edmund B. Smith, Ettie L. Smith, James H. Smith, Anna L. Spieler, Malvine Springe, Frank W. Stahl, John H. Stehman, Nina M. Stephens, Edwina Stimpson, John H. Stube, Alice Sturtevant, Minnie M. Tallman, Neil M. Thomson, Leona L. Thorne, Mary E. Thresher, Frank Ellen Tremain, John W. Troeger, Charles M. Turton, Mary E. Watts, Mary A. Weisman, Dora Wells, Mary E. Wright, Jennie D. Wyse, Dora W. Zollman, Mary

J. Zollman, Elizabeth E. Fisk, Nellie M. Horen, Julia M. Kennedy, Louise E. Poppelbaum.

Paragraph 3—That the following have voluntarily retired at ages 70 or over at an annuity as provided for in said Act to each of $1500.00 a year for life: Minnie T. Alexander, Mary A. Hotchkin, Mirabelle S. Stodder, Carrie E. Allen, Ida I. Armstrong, Sarah J. Ashton, Bertha Benson, Mary M. Boyce, Joseph Cermak, Bessie Del Banco, Mary A. Emerick, Franklin P. Fisk, Kate E. Ford, Medora Gammon, Celia M. Gilmore, Julia E. Goodman, Mary F. Goss, Mary R. Hecox, Isabella Hudson, Lucy C. Johnstone, Adelaide Jordan, Sara Ida Knight, Clarinda T. Martin, Herbert L. Merrill, Mary A. Miller, Alvin R. Moore, Isabel Richman, Edward C. Rosseter, Anna M. Schnuhr, Charlotte G. Schramm, Inez E. W. Schroeder, Fanny R. Smith, Mary E. Sneed, Fanny Stapleton, Louisa Tennant, George L. Voorhees, H. Annie Watson, Alice Wegener, Nellie White, Worrallo Whitney, Emma Yantis, Mary E. Danforth, Henrietta Dupuy, Elizabeth Gibbons, Agnes R. Snitjer.

Paragraph 4—The following Intervening Plaintiffs voluntarily retired after July 1, 1927 and before July 1, 1929—

(A) Of whom the following so retired at age 65 at an annuity to each of $1,000 a year for life: Lor-
147 ena A. Allison, Anna G. Baer, Ella M. Brophy, Mary N. Clancy, Margaret Fitzgerald, Mary W. French, Frances A. Hoey, Anna L. Lodge, Mattie E. Lough, Belle H. MacDonald, Anna G. MacDougal, Irene B. McKnight, Isabel A. Parker, U. G. Potter, Annie L. Reid, Catherine Stokes.

(B) That each of the following retired at age 66 at an annuity to each of $1,100 a year for life: Mary M. Blodgett, Emma Dean, Lizzie Justi, Cecilia B. Murphy, Sue B. Myers, Albertine J. Olson, Effie L. Perry, Julia L. Rosenthal, Martha L. Smith, Maria M. Stedman, Caroline Baldwin, Fannie Merritt.

(C) That each of the following retired at age 67 at an annuity to each of $1200.00 a year for life: Lily M. Baird, Grace H. Beeler, Isabel B. Boynton, Henrietta M. Coone, Emma E. Davis, Alice A. Freund, Emil Groener, Ida L. Groves, Xenia Jenkins, Nancy E. Linton, Minnie E. McElligott, Fannie S. Miller, Mattie Page, Fanny M. Palmer, Mildred M. Ramey, Florence V. Ross, Ellen V. Wallenberg, May Weddle, Sarah R. Wild, Frances M. Thomas.

(D) That each of the following so retired at age 68 at an annuity to each of $1300.00 a year for life:
148 Esther J. W. Barker, Catherine A. Decker, Catherine M. Delanty, Nellie Dunton, Marie Goddard, Orrel V. Huntley, Margarette G. James, William J. Kopp, Janet D. McClelland, Sadie Myers, Jessie Nicol, Catherine O'Connor, Alice M. Patchen, Cora S. Powers, Jane F. Reid.

(E) That each of the following so retired at age 69 at an annuity to each of $1400.00 a year for life: Lynora Buckley, Margaret J. Cummings, Elroy A. Dillon, Virginia W. Freeman, Otto Greubel, Effie Johnston, Sarah A. Kirkley, Mary J. Quirk, John F. Stacey, Jane E. Williams, Margaret A. Fisher, Belle G. Peet.

Paragraph 5—That the following Intervening Plaintiffs voluntarily retired under said Miller Act after July 1, 1929 and before June 12, 1935:

(A) Of these, the following so retired at age 65 at an annuity as provided in said Miller Act to each of $1000.00 a year for life: Blanche D. Abbot, Jennie S. Allison, Carrie E. Armstrong, Katherine E. Ashelby, Anna S. Bachman, Zella C. Baird, Katherine C. Baker, Jane B. Baldwin, Nettie M. Barry, Minnie M. Batterton, Byrnina Beardsley, Rose M. Beatty, Margaret M. Benson, Anna S. Bishop, Martha Violet Bishop, Grace P. Bixel, Lizzie V. Borthwick, Elizabeth B. Britt, Jessie M. Brown, Mamie J. Buckley, Ella L. Budd, Robert J. Burger, Emma B. Campbell, Sarah M. Campbell, Nettie A. Chadwick, Jennie C. Chandler, Mary A. Chappell, Rosalie B. Chivington, Anna M. Cody, Mary E. Conners, Sadie M. Cooney, Stella R. Cottrell, E. Isabel Crosby, Henrietta A. Crowley, Anna M. Cunningham, May E. Curtiss, Flora L. Dahlen, Annie E. Daley, Bridget M. Dalton, Florence G. Daniel, Elizabeth Deadman, Eula W. Deaton, Etta C. Deffler, E. Blanche Dickinson, Franklin C. Donecker, Mabel F. Doty, Maud A. Drewett, Nora P. Grogan, Sarah Hulsizer, Mina R. Jones, Rose M. Logeman, Adele M. Newton, Anna J. O'Neill, Sarah
149 C. Quirk, Cora P. Tennery, Mary E. Tosney, Alice M. Dummer, Fred C. Dunham, Ella J. Dymond, Ella E. Earle, Helen B. Eastman, Josephine C. H. Erzinger, Rose A. Farley, Elizabeth E. Farrell, Chattie E. Field, Mary F. S. Flynn, Lillian Foley, Elizabeth D. Fox, Mary A. Fox, Annie C. Fraser, E. Ellen Fuhrman, Alice L. Garthe, Anna S. Gaw, Helen V. Gibson, Ida K. Gimbel, Nancy G. Gladish, Elizabeth Goodbody, Annie H. Goodyear, Miriam L. Graham, Alice Grove, Ellen W. Hansen, Frances E. Harden, Helena D. Harper, Mary E. Hassett,

Ida E. Hegner, Julia Herrick, Frances M. Hevle, Effie Hoerner, Julia E. Hill, Alice L. Hogan, Fred G. Holmes, Laura L. Hood, Lila M. Hopkins, Mary G. Hudson, Amanda E. Isensee, Arthur W. James, Anna M. Johnston, Martha M. Johnston, Marion L. Jones, Nettie L. Jones, Louise Joyce, Doris F. Kahn, Katherine M. Keating, Sue B. Keller, Mary A. Kenney, Dorothea M. Kirby, Ernestine L. Kircher, Louise J. Klenze, Lillian A. Kosier, Matilda C. Krimmel, Bertha Kuntz, Lillian E. Kurtz, Louise H. Kurz, Inez M. Ladd, Anna E. Lancaster, Harriet C. Lapham, Nellie E. Larkin, Emma L. Lee, Nellie L. Linsley, Letta D. Little, Evelyn M. Loucks, Louise A. Lyman, Emily Magner, Elizabeth M. Manix, Marie L. Mann, Myrtle E. Mattison, Mary McCracken, Kate McKinney, Sarah C. Miniter, Zaidee E. Mitchell, Katherine E. Mohrmann, John B. Moulton, Elizabeth W. Murphy, Dora Belle Neal, Anna T. Northway, Mary Norton, Annie O'Brien, Mary O'Brien, Katherine O'Grady, Rebecca Okeson, Evangeline P. Olson, Ella M. Ottaway, Allen M. Otwell, James W. Parris, Mary G. Pearse, Ida May Peaslee, Anna L. Peat, Elizabeth Perry, Hans C. Peterson, Amelia L. Petyan, Jennie E. Plumbe, Ellen Pool, Florence M. Porter, Harriet L. Post, Anna J. Powell, Clara Putzki, Mary A. Rafferty, Margaret E. Rich, Rachael A. Ringland, Fannie S. Roberts, Katherine G. Rogers, Mary Robson, Addie E. Roziene, May E. Ryan, Fannie Samuels, Elizabeth Estella Sanborn, Mary J. Saunders, Adeline S. A. Schaefer, Mary T. Schaefer, Hermine K. Schramm, Emma A. Schreiner, Amelia Schweitzer, Emma B. Scudder, Viola M. Shaw, Mabel C. Sherwin, Eleanor C. Smith, Elizabeth Smith, Grace T. Smith, Harriet

H. Smith, May E. Smith, Edith E. Snyder, Mary Solberg, Agnes T. Spellacy, Joanna Stack, Jessie L. Stone, Agnes Styles, Mary E. Sullivan, Sarah C. Thomas, Sellie H. Toole, Rose Toomey, Elmer L. Valentine, Gertrude M. Van Lieu, Catherine M. Virts, Georgia Wagner, Ella M. Wallace, Effie E. Watson, Sarah C. White, Belle Whyte, Mary F. Willard, Fanny Williams, Belle Wilson, Lillian M. Wilson, Alice Wiltshire, Augusta L. Wines, Adrienne L. Yerbury, Margaret C. Young, Mary Zimmerman, Ferdinand J. Zipf, Annie J. Anderson.

(B) Of these, the following so retired at age 66 at an annuity as provided in said Miller Act to each of $1100.00 a year for life: Emma W. Allen, Annie E. Arnold, Mary E. Babcock, Carrie R. Barracks, Cornelia Beardsley, Jessie E. Blodgett, Elizabeth S. Bohman, Elinor K. Boothroyd, Bertha L. Bowen, Mary E. Buckley, Mary R. Cleveland, Nellie M. Cochran, Martha Cochrane, Nellie J. Cook, Pauline G. Dennis, Katherine M. Egan, Minnie Euphrat, Mary A. Fanning, Edith B. Flagler, Eleanor Hampton, Ella B. Hare, Catherine Hauch, Jacob H. Hauch, Warren C. Hawthorne, Josephine S. Hersperger, Luman Hewes, Nellie G. Hooker, Margaret Huleatte, Charlotte J. Huscher, E. Blanche Jennings, Kate Keith, Minda F. Letterman, Charles E. Linebarger, Jennie Lintuman, Margaret C. Lord, Therese McDermott, Catherine C. McLean, Mary C. McMahon, Mary E. Meythaler, Helen Mitsch, Jennie Darrow Moore, Cora B. Mowbray, Julia T. Murphy, Z. Anna Novotny, Harriett Ostrom, Alwine Pammel, John A. Peters, Kate Quarton, Minnie C. Reuter, Fanny A. Royall, Gertrude D. Schilling, William Seabrook, Mabel E. Smallwood, Carolyn I. Smith, Ella C. Sul-

livan, Mabel Sykes, Annie H. Templeton, Jennie C. Towns, Nora W. Walker, May B. Wallace, Mary Waters, Jessie Westbrook, Emma M. Westerfield, Clara L. Wightman, Jessie R. Williams, L. Ella
151 Wilmes, Leonora R. Wilson, Harriett W. Winter, Edith H. Deal, Gertrude H. Foote, Anna Jones, Letitia S. Lamkey,

(C) Of these, the following so retired at age 67 at an annuity as provided in said Miller Act to each of $1200.00 a year for life: Martha J. Adams, Louise Alvord, Sarah E. Ausemus, Ida A. Bamberger, Sarah J. Baynes, Almeda M. Bedwell, Lucy A. Benson, Ida M. Brown, Mary L. Burke, Anna Church, Grace Church, Mary F. Clark, J. Katherine Cutler, Minnie A. Dietz, Therese T. Dillon, Charlotte R. Dutton, Ada C. Dyson, Hulda L. Fischer, Angela M. Gerrity, William J. Goggin, Nellie C. Goodnow, Harriet W. Grace, S. Letitia Greene, Nellie Joy Hahn, Katherine M. Hall, Anna I. Harden, Margaret M. Harnett, Minna S. Heuermann, Ida T. Hoffmann, Mary Hynds, Ida L. Jaeger, Ada Jewell, Elizabeth Joyce, Elizabeth A. Keating, Margaret W. Kelly, Laura M. Kimpton, Josephine Krohn, Barbara C. Leu, Nellie Green Long, Harriet B. Lutz, Katherine Maloney, Hattie R. Maxwell, Nellie McCormick, Elizabeth McKillop, Elizabeth M. McLean, Ida Mighell, Erin C. Miller, Katherine T. Murphy, Emma E. Olide, Lena N. Olson, Mary G. Pennington, Alice M. Quigley, Helen M. Rathbun, Mary I. Reeling, Helen F. Roberts, Maud Secrest, Mary A. H. Simpson, Agnes M. Smith, Effie M. Smith, Josephine Stewart, Anna Straus, Nena H. Stuart, Catherine Sullivan, Berkeley J. Thomas, Julia R. Tolman, Laura M. Truscott, Miriam D. Tuttle, Mina M. Watson, Elizabeth D.

Wood, M. Ellen Yohn, Elizabeth C. Buhman, Edwin E. Hand,

(D) Of these, the following so retired at age 68 at an annuity as provided in said Miller Act to each of $1300.00 a year for life: Clara B. Allen, Anna M. Andrus, Johanna Bartky, Alma Beach, Susan M. Beaman, Elizabeth Benning, Miriam E. Bicknell, Millicent B. Bingham, Rosalie W. Bross, Alice L. Burns, Jennie B. Caswell, Sophie Chenoweth, Claus H. Claussen, Mary F. Curry, Ella Cusick, Elizabeth F. Daly, Annie E. Dillon, Elizabeth C. Fife, Mary T. Flynn, Katherine B. Fonvielle, Auguste J. Forster,
152 Sue Gallaher, Annie S. Gauch, Eugenie F. Guth, Florence Healy, Alice M. Herbert, C. Bertha Holt, Howard N. Howland, Mary L. Hurley, G. Ovedia Jacobs, Winford D. Keary, S. Eva Kendall, Emma D. Knox, Mary E. Maginnis, Carrie A. Mathews, Frances I. Mellhon, Anne E. G. Morse, Jane H. O'Brien, Minnie C. Olson, Ida M. Pohlman, Lelia Purdy, William W. Reed, Flora V. Renaud, Mary C. Scribner, Edith M. Smalley, Stella B. Vincent, Edith Meyer Visger, Agnes M. Watson, Martha Wilson, Catherine A. Burke, Minnie Fennell, Mary E. O'Neill, Joseph H. Sheffield.

(E) Of these, the following so retired at age 69 at an annuity as provided in said Miller Act to each of $1400.00 a year for life: Katherine E. Adams, M. Joice Adams, Mary T. Adams, Allison W. Augar, Emma L. Badger, Margaret Baker, Edith M. Brogan, Clara Maude Brown, Dixie Lee Bryant, Margaret M. Byrne, Elizabeth Campbell, Eleanor Chittick, Ellen F. Costello, John M. Davies, Jane P. Deming, Lura L. Doran, Kate E. Dover, Martha H. Dwyer,

Alice F. Ely, Lillian Farnam, Fannie T. Farrell, Bertha Fontayne, Thomas H. Furlong, Sarah E. Gay, Minnie E. Gray, Lillian Greenleaf, Kate O. Guenther, Eleanor L. Hally, Caroline Hammerschmidt, Walter J. Harrower, Sarah McG. Hennen, Jean W. Hubbard, Carrie A. Hughes, Mathilde Jaeger, Emma M. James, Mary Jones, Agnes W. Keith, Anna J. Kerrigan, Eva A. Latham, Emma M. Letz, Anna N. Loftus, Margaret E. Lyons, Myrtilla M. Mace, Malinda M. Mann, M. Josephine McConville, Susan J. McDonnell, Anna McKillop, Agnes McIlhon, Margaret E. McLaughlin, B. Anne Meagher, Elise Mendius, Harriet C. Munsell, Mary A. O'Brien, Jane Black Okeson, Josephine Parker, Arthur L. Penhallow, Anna V. Pettit, Helen K. Phelps, Margaret Powell, Frank W. Rieder, Anna T. Robinson, Mary L. Russell, Hannah Schiff, Jennie P. Sorenson, Anna M. Stockbridge, Ada R. Thompson, Agnes G. Troschel, Elizabeth E. Waldt, Katherine O. Ward,
153 Anna Albertine Wetter, Elmeda J. Wilder, Fannie B. Wilson, Mary C. Kingsbury, Margaret Mahoney.

Paragraph 6—The following Intervening Plaintiffs made written requests to the Board of Education during the months of May and June, 1935, for voluntary retirement under the Miller Act. Superintendent of Schools of the City of Chicago recommended that they should be retired from active service in accordance with said written requests. Such written requests, as more fully set out in the Complaint, were not acted upon by said Board except to defer action at a meeting held June 26, 1935, and at a meeting of said Board on July 24, 1935, defendant Board adopted a report of the Superintendent of Schools purporting and attempting to com-

pulsorily retire as of age 65 or over all of such Intervening Plaintiffs under the Miller Act as amended in 1935 at an annual annuity of $500.00.

(A) Of these, each of the following had in June, 1935, attained age 65 and was entitled on said written request to be retired under the Miller Act as effective in June, 1935, at an annuity of $1000.00 a year for life:

Recommended by Superintendent of Schools for retirement, as appears from printed proceedings of Board of Education of June 26, 1935, No. A-35263, pages 1408 and 1409: (Exhibit "N" attached to Complaint) (Rec. 105-106; Abst. 76) Harry W. Abbott, Margaret M. Barrett, Marie E. Burns, Ida M. Clark, Anne Feely, Edith K. Hammill, May Hartley, Emma F. Heerwagen, Rosanna M. Kiersted, Olga A. Liedberg, Charlotte L. Mitchell, Amelia
154 (Emily) Reinhard, Rebecca F. Turk, Margaret W. Van Osdel, Carrie G. Wilbur, Anna J. Wilson.

Recommended for retirement as appears from printed proceedings of said Board of June 26, 1935, No. N-35263, pages 1412 and 1413 (Exhibit "O-2" attached to Complaint) (Rec. 111-112; Abst. 78): Caroline F. Arnold, Anna C. L. Bartsch, Nellie M. Bennett, Jessie E. Black, Sarah J. Brittenham, Elizabeth E. Eckhardt, Abigail C. Ellings, Sarah M. Evans, Lillian E. Fitch, Nellie T. Flannery, Lottie Hancox, Anna T. Holden, Catherine P. Hurley, Visa McLaughlin, Anjuline O. Meyer, Rose Mary O'Brien, Elizabeth Letzkuss Read, Helen M. Sabin.

(B) Of these, each of the following had in June, 1935, attained age 66 and was entitled on said written request to be retired under the Miller Act as

effective in June, 1935, at an annuity of $1100.00 a year for life:

Recommended for retirement, as appears from printed proceedings of said Board of June 26, 1935, No. A-35263: (Exhibit "N" attached to Complaint) (Rec. 105-106; Abst. 76) Sarah Jane Berry, Francis E. Brimblecom, Alice T. Bunker, Margaret Coogan, Nellie J. Scott, Lillyan Short, Rose M. Wookey, Emma L. Glavin.

Recommended for retirement, as appears from printed proceedings of said Board of June 26, 1935, No. N-35263: (Exhibit "O-2" attached to Complaint) (Rec. 111-112; Abst. 78) Mary P. Blount, Amelia C. P. Brownlow, Elvira D. Cabell, Nellie A. Daum, Theresa J. Donnelly, Alice H. Fassett, Sarah A. Flannery, Lillys R. Geer, Clinton Huffman,
155 Charles G. Krauskopf, Mary E. Kremer, Julia O'Brien, Carrie Rupel, Annie L. Smith, George Steffens.

Of these, Intervening Plaintiff Elizabeth Lord, had attained age 66 in June, 1935, as appears from report of Superintendent of Schools, No. H-35380, presented at the meeting of defendant Board on July 24, 1935, (page 51 of printed proceedings of said Board at said meeting) and had presented her written request for voluntary retirement effective June 28, 1935.

(C) Of these, each of the following had in June, 1935, attained age 67 and was entitled on said written request to be retired under the Miller Act as effective in June, 1935, at an annuity of $1200.00 a year for life:

Recommended by Superintendent of Schools, as appears from printed proceedings of Board of June 26, 1935, No. A-35263, (Exhibit "N" attached to Complaint) (Rec. 105-106; Abst. 76) Olive E. Cooper, Agnes L. Danielson, M. E. Kemper, Sarah E. Lyons, Cora L. Sunderland, Edith L. Young, Grace E. Jackson, Mary Taylor.

Recommended for retirement, as appears from printed proceedings of said Board of June 26, 1935, No. N-35263: (Exhibit "O-2" attached to Complaint) (Rec. 111-112; Abst. 78) Mary H. Dameier, Ida M. Edwards, Mary E. MacMillan, Lucy C. O'Connor, Cora L. Rigby, Anna T. Schneidewendt, Minnie A. Stevens, Edith V. Watson, Mary C. Whitmore, Lillian H. Wright.

156 (D) Of these, each of the following had in June, 1935, attained age 68 and was entitled on said written request to be retired under the Miller Act as effective in June 1935, at an annuity of $1300.00 a year for life:

Recommended for retirement by Superintendent of Schools, as appears from printed proceedings of said Board of June 26, 1935, No. A-35263: (Exhibit "N" attached to Complaint) (Rec. 105-106; Abst. 76) Lilly M. Compher, Mary A. Doherty, Mary G. Guthrie, Flora E. Hallinen, Charlotte Leekley, Carrie F. Patterson, Romaine S. Peter, Virginia L. Pfuderer, Mary K. Platten, Walter W. Roberts.

Recommended for retirement by Superintendent of Schools, as appears from printed proceedings of Board of June 26, 1935, No. N-35263: (Exhibit "O-2" attached to Complaint) (Rec. 111-112; Abst.

78) Mary Ella Colwell, Harriet Eckhardt, Sarah J. Goodrich, Katherine F. O'Connell, Samuel E. Kitchey.

Recommended for retirement by Superintendent of Schools, as appears from printed proceedings of Board of June 26, 1935, No. D-35242, Pages 1402 and 1403: G. Charles Griffiths.

Of these, Intervening Plaintiff Charles A. Kent, had in June, 1935, attained age 68, as appears from report of Superintendent of Schools, No. H-35380, presented at said meeting of said Board of July 24, 1935 (page 51 of the printed proceedings of said Board at said meeting) and had presented his written request for voluntary retirement on June 29, 1935.

157 (E) Of these, each of the following had in June, 1935, attained age 69 and was entitled on said written request to be retired under the Miller Act as effective in June, 1935, at an annuity of $1400.00 a year for life:

Recommended for retirement by Superintendent of Schools, as appears from printed proceedings of said Board of June 26, 1935, No. A-35263: (Exhibit "N" attached to Complaint) (Rec. 105-106; Abst. 76) Lillian Brumagim, S. J. A. Conner, Ella M. Danforth, Mary A. Engelke, Bessie J. Foudray, Herman Garrison, Anna S. Halliday, Margaret A. Huggard, Halsey H. Matteson, Rose E. Rafferty, Fred E. Smith, Lena M. Whitcomb, Anna M. C. White, Edward F. Worst.

Recommended for retirement by Superintendent of Schools, as appears from printed proceedings

of said Board of June 26, 1935, No. N-35263: (Exhibit "O-2" attached to Complaint) (Rec. 111-112; Abst. 78) Lewis W. Colwell, Jude E. Davis, Mary B. Livingston, William Schoch, Albert L. Smith, Mary L. Walsh, William T. Wilson.

Recommended for retirement by Superintendent of Schools, as appears from printed proceedings of said Board of June 26, 1935, No. D-35242, Pages 1402 and 1403: David L. Murray.

Paragraph 7—Intervening Plaintiff Adeline R. White had in June, 1935, attained age of more than 72 years and was until June 28, 1935, in the service of the defendant Board as teacher in the public schools of Chicago and had been a teacher in such employ for more than 25 years. At the meeting of said Board of June 26, 1935, as appears from printed proceedings thereof, page 1414, No. O-35263, the Superintendent of Schools recommended that she be compulsorily retired as of June 28, 1935,
158 pursuant to Sections 1 and 2 of said Miller Act as then in force, which provided for the compulsory retirement of teachers over 70 at an annuity of $1500.00 a year for life. No action was taken by the Board on such recommendation except to refer the report to the General Committee of the Board and on July 24, 1935, the Board adopted the report of the Superintendent of Schools and attempted to compulsorily retire said Intervening Plaintiff under said Miller Act as amended in 1935, at an annuity of $500.00.

Paragraph 8—Each of the Intervening Plaintiffs named in Paragraph 2 is one of the persons referred to in the original Complaint as one of the

retired teachers, principals, etc. compulsorily retired from active teaching in the public schools of Chicago prior to July 11, 1935, by the defendant Board of Education and is similarly situated to the original plaintiffs Dodge, Cook, Loomis, Whigam, Armstrong, Morse, Keen, Coddington and Toole, and each such Intervening Plaintiff was compulsorily retired under the Miller Act from active teaching in the public schools of said City of Chicago and from active service in such employment of defendant Board by appropriate proceedings of said Board, and at the time of his or her retirement had attained age 70 or more years and had served in the public schools of said city for 20 or more years, and defendant Board in so
159 compulsorily retiring each of said Intervening Plaintiffs specifically provided that each was retired under said Miller Act upon an annuity of $1500.00 a year thereafter for life, as in said Miller Act provided.

Paragraph 9—It is alleged that each of Intervening Plaintiffs named in paragraphs 3 and 4 above is one of the retired teachers, principals, etc., who voluntarily retired under the Miller Act as amended in 1927, from active teaching in the public schools of Chicago and is similarly situated to original Plaintiff McClelland, and that each made written request for retirement and was retired from active teaching, and at the time of such respective retirement of each had attained the age as shown as to each in paragraphs 3 and 4, and that each had served in the public schools of Chicago for 15 years or more immediately prior to retirement, and upon retirement each was entitled to an annuity for life

of the amount each year as shown as to each in paragraphs 3 and 4.

Paragraph 10—That each of the plaintiffs named in paragraph 5 above is a retired teacher, principal or other educational employee voluntarily retired under the Miller Act as amended in 1929 after July
160 1, 1929 and before July 11, 1935; is similarly situated to original plaintiffs Baird, Corbett, Callahan, Dean, Dougherty, Tierney and Woulfe; each made written request for retirement and was thereupon so retired from active teaching, and that at the time of such retirement each had attained age as to each shown in paragraph 5 and had within the last 20 years prior thereto served in the public schools for an aggregate of 15 or more years and had served in the public schools of the United States for 25 or more years.

Paragraph 11—That each of Intervening Plaintiffs named in paragraph 6 above is one of the teachers, principals or other educational employees who during May and June, 1935, made written request for voluntary retirement under the Miller Act as same was then in force and before the amendment of 1935 became effective, had each then attained ages shown as to each in said paragraph 6, and that the service of each during the 20 years prior to June, 1935, aggregated 15 years or more in the Chicago public schools and 25 years or more in the public schools of the United States, and that each at the time of such application was entitled under
161 the law to voluntary retirement and receive thereafter for life an annuity in the amount as shown as to each in paragraph 6.

Paragraph 12—The Intervening Plaintiffs adopt the allegations in said Complaint with same effect as if herein again inserted and repeated at length and applied to them, and each joins in the prayer of the original complaint and every paragraph thereof as fully as if each had been specifically and originally named as plaintiff in the original complaint.

Paragraph 13—Intervening Plaintiffs pray that the pleadings heretofore or hereafter filed for original plaintiffs stand as like pleadings for Intervening Plaintiffs, as if each Intervening Plaintiff was named as co-plaintiff with original plaintiffs and that any pleadings which have been or may hereafter be filed on behalf of defendants to pleadings of original plaintiffs also stand as to Intervening Plaintiffs.

Paragraph 14—Intervening Plaintiffs pray that in the orders already entered and proceedings had herein and any further proceedings and further orders and decrees said Intervening Plaintiffs be severally considered and their rights be adjudicated as fully as if they had been made co-plaintiffs with original plaintiffs.

162 Paragraph 15—Intervening Plaintiffs pray that each be granted full relief under the prayer and each paragraph of original complaint and that they be given benefit of all allegations in the original complaint and be granted all the relief prayed for therein, as if such allegations and prayer for relief were herein set forth in full and as if they had originally joined as co-plaintiffs in said original complaint, and also pray for other, further and different relief as equity may require, etc.

Signed by Intervening Plaintiff Dora Wells and sworn to November 12, 1935, who in her affidavit states that she is one of the petitioners and intervening plaintiffs; that she had read and knows the contents of the petition and that the same is true, and that she is in this behalf agent of her intervening co-plaintiffs therein named.

165 Motion to dismiss, filed November 18, 1935, on behalf of defendants City of Chicago, Edward J. Kelly, Mayor, Gustave A. Brand, City Treasurer, and Robert B. Upham, Comptroller of said City, by Barnet Hodes, Corporation Counsel, moved to dismiss case, and as grounds set forth that plaintiffs' Complaint is substantially insufficient in law in the following particulars:

1—That plaintiffs have not stated such a case as entitles them or any of them in a court of equity to any relief against these defendants or any of them concerning matters contained in the Complaint.

2—That it appears in the Complaint no contractual or vested rights are involved.

166 3—That it appears that the acts of the General Assembly which plaintiffs seek to have declared unconstitutional do not violate any provisions of the Illinois Constitution or the United States Constitution.

4—That it appears from the Complaint that plaintiffs' remedy, if any, is in court of law.

5—That it appears from the Complaint that the remedy sought is a money judgment against the defendant Board of Education.

6—That the Complaint alleges that all things which plaintiffs seek to enjoin have already been done.

Wherefore defendants move to dismiss; that defendants go hence without day, and that defendants have judgment for costs.

Signed by City of Chicago and the said Mayor, said Treasurer and Comptroller of said City, by Barnet Hodes, Corporation Counsel.

167 Affidavit of Joseph Grossman that he is First Assistant Corporation Counsel of City of Chicago, is authorized to make the affidavit and that the foregoing motion to dismiss is not interposed for purpose of delay and is well-founded in law. Dated November 18, 1935.

169 Answer, filed November 20, 1935, on behalf of defendants Board of Education of City of Chicago; James B. McCahey, president and member thereof; Ernst Buehler, Vice-President and member thereof; Irwin Walker, Paul Drymalski, Charles W. Fry, Joseph P. Savage, William D. McJunkin, Harry W. Solomon, Joseph J. Salat, William H. Bied and Mrs. W. S. Hefferan, members of said Board; Frank H. Landmesser, Secretary, and Harry H. Brackett, Auditor, to Complaint of Chester C.
170 Dodge, *et al.*, complainants, reserving unto defendants all right of exceptions to said Complaint, says:

1—Admit that complainants are teachers or principals in the Chicago public schools as alleged in Paragraph 1 of Complaint, but deny that plaintiffs were retired as alleged in paragraph 1; deny that they had served in the public schools of United States as there alleged.

Admit that plaintiffs have been retired from public school system of City of Chicago, and that all their services as principals or teachers have been severed pursuant to statute.

2—Defendants admit that defendant Board of Education has been a body politic and corporate since April 1917; that James B. McCahey is president and member thereof; Ernst Buehler, Vice-President and member thereof; that defendants Irwin Walker, Paul Drymalski, Charles W. Fry, Joseph P. Savage, William D. McJunkin, Harry W. Solomon, Joseph J. Salat, William H. Bied and Mrs. W. S. Hefferan are members; that defendant Frank H. Landmesser is Secretary and Harry B. Brackett is Auditor of said Board; that Defendant Edward J. Kelly is Mayor of City of Chicago, and defendant Gustave A. Brand is City Treasurer and defendant Robert B. Upham is Comptroller of said City.

171 3—Defendants admit that prior to April 20, 1917, defendant Board was empowered to employ teachers and fix amount of their salaries.

4—Admit that soon after decision in Supreme Court in case of *People ex rel. Fursman* v. *City of Chicago*, 278 Ill. 318, school laws pertaining to the City of Chicago were amended by amendments known as the "Otis Law"; that section 138 of said law as so amended is in substance as set forth in Paragraph 4 of Complaint and that said Section was amended at recent session of the General Assembly limiting tenure of office of teachers, and providing that such tenure should be subject to retirement at age 65.

5—Admit that on or about June, 1925 an Act was passed by the General Assembly known as the "Mil-

ler Act'' and was approved by the Governor as set forth in Paragraph 5 of Complaint and applied to cities having a population exceeding 500,000, and provided for retirement of teachers and principals in substance as alleged in Complaint.

6—Admit that on April 8, 1925, defendant Board approved report of the then Superintendent of
172 Schools recommending that General Assembly pass an Act, but deny that the Act so recommended was similar to the ''Miller Law'' that was afterwards enacted.

7—Deny that after alleged approval of said proposed Act (paragraph 7 of Complaint) many conferences were held between representatives of the then Superintendent of Schools and representatives of the Law Department; deny that the Bill thereafter introduced in the General Assembly was drafted in the Law Department of the Board of Education, but admit that the Bill was afterwards introduced in the General Assembly by Representative Miller, and admit that the same was not approved by the Governor until May 19, 1926.

8—Admit that defendant Board on December 9, 1925, adopted ''Emeritus Rule'' as set forth in Paragraph 8 of Complaint.

9—Admit that suit in chancery was filed in the Circuit Court of Cook County, as set forth in Paragraph 9 of Complaint, and was there dismissed for want of equity and that the Appellate Court reversed the decision of the Circuit Court and directed that an order be entered reinstating teachers removed pursuant to ''Emeritus Rule.''

173 10—Admit that the "Miller Law" was amended by the Fifty-fifth General Assembly by amendment providing for voluntary retirement of teachers between ages 65 and 70.

11—Admit that amendment to "Miller Law" was reported to Board of Education by Superintendent of Schools March 9, 1927, and that in said report was included a written recommendation made by the principals of the school system.

12—Admit that on May 11, 1927, defendant Board authorized employment of an Actuary to investigate all phases of Bill then in General Assembly amending the "Miller Act" and that on May 25, 1927, they had employed Henry R. Corbett, Actuary, and recommended that his report be received.

13—Admit that following the decision of the Appellate Court in the case of *Armstrong* v. *Board of Education,* 247 Ill. App. 584, defendant Board reinstated teachers and principals who had been retired under "Emeritus Rule", except those who had reached retirement age as fixed by Miller Law, and paid to all such teachers their back salaries.

174 14—Admit that the Miller Law was amended by the Fifty-sixth General Assembly, which amendment became effective.

15—Admit that the Fifty-ninth General Assembly of Illinois adopted an Act entitled "An Act to amend Sections 1 and 2 and the title of 'An Act to provide for the compulsory and voluntary retirement of teachers, principals * * * and for the payment of retirement annuities,' approved May, 1926, as subsequently amended, and to repeal Section 3

of said Act." That said Act became law without the Governor's signature on July 12, 1935.

Admit that by the provisions of said Act Board of Education as soon as practical after the law becomes effective shall retire all teachers, principals, etc., 65 or more years of age and shall thereafter retire all teachers, etc., on attaining age 65. Allege that the Act as amended reduced annuities paid to persons retired pursuant to the Act from $1500.00 to $500.00 and reduced retirement age from 70 to 65 years.

175 16—Defendants admit that the Board of Education gave full consideration to the original Miller Act at the time it was passed and to subsequent amendments, and allege that it also gave due consideration to amendments adopted by the 59th General Assembly and filed with the Secretary of State July 12, 1935; allege that in considering last mentioned amendments it took into consideration that the amounts required to be paid to retired teachers who no longer render service had increased to such vast amounts that unnecessary and unreasonable burden was placed upon taxpayers of the School District.

Allege that in considering amendment adopted by the 59th General Assembly the Board took into consideration the fact that "Emeritus pensions or salaries" are payable out of Educational Purposes Fund derived by taxes levied for educational purposes; allege that during 1926, first effective year of Miller Law, Board expended $12,000 for "Emeritus pensions"; in 1927, Board paid $87,425; in 1928, $248,015.40; in 1929, $348,520.50; in 1930, $518,-

415.50; in 1931, $642,481.50; in 1932, $739,993; in 1933, $873,909.50; in 1934, this expenditure for which Board of Education or school children received no benefit increased to over $1,000,000.00, and amount actually expended was $1,000,906.87 and allege that it was necessary in January, 1935, before amendment to law became effective, for the Board to appropriate $1,125,000.00.

176 Allege that the Board in considering amendment also considered that in addition to "The Emeritus pension" there was provided by law another pension from which teachers received an annuity commonly known as "Public School Teachers' Pension and Retirement Fund" also maintained principally from money derived by taxation. (Par. 158, Sec. 154 (122) Cahill's Ill. R. S. 1935). Although teachers did contribute to fund, the Board in considering recent amendment to Miller Law took this pension fund into consideration and recommended to General Assembly and General Assembly did increase tax rate for that purpose and amounts of pensions to be paid under that Act. Allege that the Board also took into consideration that during 1933, 1934 and 1935 the maximum salary of an elementary school teacher teaching full time in the public schools of Chicago was $1912.50 and that this same teacher upon retiring would receive from the two "pension funds" a total of $2500.00 or $587.50 more per year than if working; that the salary for lower group of teachers for first year of service was $1127.50 so that a teacher retiring upon maximum salary performing no service received pension of $1372.50 more than the salary of lower group of teachers. Allege
177 that the Board also took into consideration that

due to financial condition of country and failure to collect taxes, it had been compelled to and had made substantial cuts in salaries of all employees, including teachers, and that as a result "Emeritus teachers" retired on pensions received pensions in larger amounts than large majority of teachers and employees performing daily service.

Allege that Board also took into consideration that retired teachers receiving pensions pursuant to "Miller Law," as amended, and pursuant to Teachers' Pension and Retirement Fund, as amended by 59th General Assembly, would receive pensions comparable favorably with largest pensions paid any other public employees in the State.

Allege that Board also took into consideration in considering amendment adopted by the 59th General Assembly that there were over 4000 young teachers, college graduates, educated by defendant Board pursuant to statute at taxpayers' expense, who had successfully passed examinations provided for in Section 138 of the School law and were holders of teachers' certificates entitling them to teach, many of whom had been waiting for over three years for assignments and who rightfully believed they were entitled to immediate employment in the pub-
178 lic school system of Chicago. Allege that defendants also took into consideration that these young women were better qualified to teach than the teachers affected by the amendment to the Miller Law who had passed age limit "where all government employees and all the employees in larger business houses are presumed to have become inefficient."

Allege that defendants also took into consideration report of Superintendent of Schools, portions

of which are set forth in paragraph 11 of Complaint, omitted portions of said report that the Board took into consideration being:

(2) Amendment will give schools relief from incapacitated teachers over age 60 and without increased cost since new teachers employed to take the place of those retiring will begin at lower steps of salary schedule and salary of new teachers and pension under this amendment will be less than salary of old teachers who retire under amendment.

(3) Comparing total amounts paid to teacher retiring at superannuation pension age on $1500 a year for 8½ years, (the expectancy of life at age 70) with another teacher retiring at age 60 on $700 a year for 14 years (the expectancy of life at that age) the Board would save nearly $3000 on teacher retiring at age 60 as compared with what the Board would pay same teacher if she remained in the service until 70 and then retired. This does not include salary while teaching through intervening 10 years, but simply the two pensions.

(4) Exact comparison of all factors involved impossible. If elementary teacher is retired during 60's, and an elementary teacher is added at minimum salary, the problem is simple, or if high school
179 teacher takes place of a high school teacher, or elementary school principal takes the place of a high school principal, the problem is simple, but as some teachers are added to system with many years of experience and these start somewhere in the middle of the schedule, it is impossible to give exact figures. Every method adopted for comparison shows cost of substituted teacher plus pension paid to teacher retired between 60 and 70 will be about equal to

what Board would have to pay to teacher thus retired if she had remained in the service at full salary up to the age of superannuation. (Full report, Exh. "F," above—Rec. 90, Abst. 64.)

Defendants then allege that in considering amendments that became effective July 11, 1935, they took into consideration salaries working teachers receive and reductions necessarily made in such salaries by reason of lack of funds to pay salaries and moneys retired teachers were receiving pursuant to "Miller Law," and pursuant to Teachers' Pension and Retirement Fund Law; also that no reductions had been made in amount of pensions and annuities received pursuant to "Miller Law," which facts, they allege, appear in two statements prepared by defendants which were submitted to each member of the General Assembly and which statements are then set up and are as follows:

180 SENATE BILLS 528 AND 529

Working Chicago Teachers Now Receive:	Per Annum	Retired Chicago Teachers Now Receive:	Per Annum
Max. Elementary salaries, $250.00 per mo. basic	$2,250.00	From Pension Fund	$1,000.00
		From Educational Fund	1,500.00
Less 15% reduction per mo. $212.50 net	337.50	Total payment to retired teacher	$2,500.00
NET annual salary for 9 mo. school year	$1,912.50	NOTE: Retired teachers do not and have not suffered any reduction in pension or so-called annuity.	

RESULT

	Per Annum
Retired teachers now receive	$2,500.00
Working elementary teachers employed every school day now receive	1,912.50
Excess amount received by retired teacher over and above that of elementary teacher in active service	$ 587.50

EFFECT OF ENACTMENT OF SENATE BILLS 528 and 529

	Per Annum
All retired teachers will then receive:	
From Pension Fund (same as at present)	$1,000.00
From Educational Fund	500.00
Total payment	$1,500.00

181 To the Honorable,

The Members of the House of Representatives,
Of the State of Illinois:

Senate Bills 528 and 529 (House Bills 1047 and 1049) amend the School Law that applies to Chicago only. These two bills were given an extended hearing before the Senate sitting as a Committee of the Whole and duplicates of them (H. B. 1047 and H. B. 1049) were referred to the Committee on Civil Service, which after a full hearing recommended that the bills do pass.

These Bills change the retirement age of teachers from 70 to 65 years. School authorities who are charged with the responsibility of conducting the

schools, are of the opinion that such changes will increase the efficiency of the teaching staff by supplanting teachers of this age with qualified young teachers, 4,000 of whom are awaiting assignment. Many have been on the list since 1929.

S. B. 528 amends the law which now provides for the payment of $1,500.00 per year as a so-called annuity to all retired teachers over and above their regular Pension of $1,000.00 per year received by them on retirement, from the Pension Fund. This total Pension and Annuity of $2,500.00 per year is $587.50 in excess of the maximum salary now paid to active elementary teachers who work every school day.

This amendment reduces the extra annuity or grant from the Board of Education to these retired teachers, from $1,500.00 to $500.00, but does not affect the Pension of $1,000.00 per year which they continue to receive, making a total which these retired teachers will receive, after the Bill passes, of $1,500.00 per year, being $1,000.00 per annum from the Pension Fund and an additional $500.00 per year as a gift from the Educational Fund.

The present law has been in force ten years. The first year, the Board paid out for this so-called annuity, a total of $12,000.00. Last year, the cost to the Board of Education was over $1,200,000.00—an increase of 1,000%. This money was paid by the Board out of its Educational Fund, thereby reducing the amount which it can use for current educational purposes, $1,200,000.00. These retired teachers give no service whatsoever to the schools.

During the past years, active teachers have suffered reductions in salaries amounting to 23½%. These retired teachers have never suffered a reduction and have been paid the full $1,000.00 from the Pension Fund and the full $1,500.00 in addition, from the Educational Fund, making a total received per year of $2,500.00.

The economy effected by the passage of S. B. 528 and S. B. 529 will materially assist the Board to continue to preserve every educational advantage to the pupils, to keep the schools open nine months of the year, to maintain teachers' salaries at the present rate and pay them, and to give proper consideration to the already overburdened tax-payer.

Respectfully submitted,

Board of Education of the City of Chicago

By James B. McCahey, President

William H. Bied
Wm. D. McJunkin
Ernst Buehler
Charles Fry
Paul Drymalski
Harry W. Solomon
Joseph J. Salat
Irwin N. Walker

Members.

182 17—Defendants admit that on July 28, 1926, 20 teachers and principals were retired by defendant Board pursuant to provisions of "Miller Law" on recommendation of Superintendent of Schools.

18—Admit that defendant Board on January 27, 1927, approved report of Superintendent of Schools and retired 14 teachers, including Plaintiff Chester C. Dodge.

Defendants deny that plaintiff Dodge since retirement on February 1, 1927, until September 1, 1935, received retirement annuity provided for by "Miller Act" of $1500 annually, but allege that he was paid the same up to date when "Miller Act" was amended and took effect July 11, 1935, and that thereafter he was paid annuity at the rate of $500 annually.

19—Deny that in every case in which one or more persons became subject to compulsory retirement, Board compulsorily retired as of August 1, 1927 and of February 1 and August 1, 1928 and each year thereafter to and including retirements as of Feb-
183 ruary 1, 1935, all teachers, principals, etc. upon their attaining respectively age at which it was in the "Miller Act" provided they should be so compulsorily retired.

Deny that Board of Education paid to each of such teachers, principals and other educational employees compulsorily retired under "Miller Act" annual retirement allowance of $1500 for the periods of their respective retirement allowances to and including July, 1935.

184 20—Defendants admit that plaintiffs named in paragraph 20 of Complaint were retired as teachers or principals as of dates alleged; deny they have been retired from active service of Board, but allege that they have been completely separated and retired as teachers or principals in the public schools

and have performed no service whatsoever since their retirement and that many of them left the State of Illinois.

Deny that all plaintiffs or any of them so compulsorily retired received retirement annuities of $1500 a year each to and including September, 1935, but allege that said annuity of $1500 per annum was paid to and including June, 1935.

21—Deny that after July 1, 1927 to and including May 15, 1935, defendant Board pursuant to Section 3 of "Miller Act" as amended in 1927 and in 1929, in compliance with provisions thereof retired from active service as voluntary retirements all teachers, principals, etc., as provided in Section 3, who were qualified thereunder upon their written requests; deny that such retirements or any of them in each instance became effective from date named in such request by each such teacher, principal, etc.

185 Deny that Board paid to all such teachers, principals, etc., so voluntarily retired under Section 3 of said "Miller Act", retirement allowances provided in said Section for age at which such teacher, principal, etc., so voluntarily retired up to and until September, 1935; admit that retirement annuities were paid in semi-monthly installments during preceding school year commencing September, 1934, and ending in June, 1935.

22—Admit that throughout period from July, 1927, to and including May 15, 1935, Superintendent of Schools from time to time presented to defendant Board reports recommending that in accordance with written requests, members of teaching force therein named be retired from service pursuant

to provisions of retirement law; that said reports specified names of teachers or principals, dates of
186 birth, length of service in the public schools; deny that in each instance defendant Board at the respective meeting at which reports were presented approved and adopted the reports and retired members of teaching force mentioned in said reports.

23—Defendants admit plaintiff George B. McClelland was retired pursuant to Section 3 of the "Miller Law", October 1, 1928; Nellie C. Callahan was retired pursuant thereto at meeting of December 14, 1932; Caroline M. Dean was retired pursuant thereto on May 15, 1935; Catherine L. Baird was retired pursuant thereto April 27, 1935. Defendants deny that Laura Tierney was retired in June, 1933, but allege that she was retired August 9, 1933.

Defendants admit that Nellie T. Woulfe was retired August 23, 1933; deny that Mary L. M. Corbett was retired February 1, 1933, but allege she was retired December 26, 1934; defendants deny that Lillian F. Dougherty was retired pursuant to said Section 3 in June, 1933, but allege that she was retired on August 9, 1933.

187 24—Defendants deny that it appears from official proceedings of Board covering period July 1, 1927 to and including May 15, 1935 that practice of superintendent of schools and of defendant Board had been uniform; that in all instances written requests from teachers over 65 have been immediately complied with; that the Board and Superintendent of Schools have, as a matter of course, acted favorably upon such requests; that the Board has not

sent any such requests to a Committee of the Board or deferred action thereon, but on the contrary, allege on numerous occasions recommendations of Superintendent of Schools for transfer of teachers pursuant to various sections of the "Miller Law" including Section 3, have been referred to committees of the Board, temporarily deferred, referred to standing committees of the Board, and referred to the Attorney for his opinion thereon.

Defendants deny that there has been any uniform or unvaried practice over period mentioned in the Complaint showing that in any one instance the Board or Superintendent of Schools considered transferring of teachers pursuant to "Miller Law" as mere ministerial act but allege Superintendent of Schools has given consideration to and investigated every application made by teachers for trans-
188 fers pursuant to Section 3 of Act, and made thorough examination of facts upon which application is made; that he has in many cases requested opinion from the Attorney relative to what action he should take.

Defendants allege that the Board of Education has given due consideration to recommendations of Superintendent of Schools regarding retirements pursuant to Section 3 of the Act, and that Board on numerous occasions, in order to investigate recommendation of Superintendent, has deferred action to later meetings and has referred recommendations to the Attorney for his opinion and to standing committees of the Board.

Defendants deny that Board had no discretion as to granting requests for retirement under provisions of Act, but that it was its duty to carefully

consider all applications for retirement, and that Board did give all applications due consideration.

189 24½—Alleges that amendment to "Miller Law" and amendment to Section 138 of "Otis Law", were introduced at regular session of 59th General Assembly, May 22, 1935, entitled Senate Bills Nos. 528 and 529 respectively; that each was read for first time in Senate May 22, 1935 and advanced to second reading; read for second time May 23, and advanced to third reading; read for third time June 4, 1935, and passed on roll call and sent to House of Representatives. Received in House June 5, 1935; first reading June 6 and advanced to second reading; second reading June 12, 1935, and advanced to third reading; third reading June 13, 1935, in House of Representatives and passed on roll call. On that day motion to reconsider made and tabled. That each of said Bills was ingrossed, signed by the President of Senate and Speaker of House and sent to Governor for approval; that Governor did not sign or veto either of them; that they were thereafter filed June 12, 1935 in the office of Secretary of State;
190 that Board of Education was advised of each of said Bills and its members in person attended various sessions of the General Assembly and recommended to various members thereof the passage of said Bills.

Allege that defendant Board and defendant members thereof had been advised that dual pension system in force was fundamentally unsound and believed that passage of Senate Bills 528 and 529 would improve existing conditions relative to pensions; that in 1931 pension conditions of Board of Education and necessity of amendments to pension

laws had been discussed by members of said Board and members of General Assembly of Illinois and at meeting of said Board held June 8, 1931, for purpose of receiving and considering an audit requested by the Educational Committee of Illinois Senate, Chairman of that committee addressed Board and advised it as follows:

That sub-committee of Education Committee made no demand on Board to make this survey. Sug-
191 gests, however, that survey be made; that education system of State is a creature of Legislature maintained by taxes. In Chicago rate of taxation is fixed by Legislature; that Legislature and taxpayers have right to know how money is expended. There has been criticism about some expenditures. Legislature thought disinterested Audit Company should make a survey and make that suggestion to Board of Education. The Board cooperated and survey has been made and by Audit Company which has no personal interest in matter. Investigation made as to standing of that company and report is ready and has been distributed this morning. That he is going to ask Secretary of Committee, Senator Lee, to read report to the Board of Education. Senator Charles Lee then proceeded to read report of Audit Company of Cleveland.

Allege that Senator Lee then read the report which contained survey of financial condition of Board and made suggestions relative to economies; that that report contained the following:

192 That in previous section salaries of teachers in active service discussed; that in that connection, for comparison, consideration must also be given to pro-

vision made for teachers who after years of useful service are eligible for retirement; the General Assembly of Illinois has dealt with that subject in most generous manner.

Under Chicago Public School Teachers Pension and Retirement Fund Act effective since 1909, teacher after 25 years' service entitled to annuity of $800, and in addition, $20 per year for each additional year's service until maximum of $1000 reached. Source of such revenue $10 per year from each teacher in service 4 years or less; $15 per year from teachers in service 8 years or less; $25 per year from teachers in service 12 years or less; $50 per year from teachers in service more than 12 years. Also from taxes.

Tax of ¼ mill with provision that if same does not produce income exceeding twice amount paid by teachers, Board shall make up deficiency from educational fund.

In addition to this pension scheme, Board is obligated under "Miller Act", effective since 1927, to carry retired teachers on its pay roll for life under sliding scale arrangement. Teachers retiring age 65, $1000; 66, $1100, and rising to $1500 at age 70. No contributions by teachers. Requirements each year set off in budget and paid out of educational fund. In reality, it is a deferred salary and not a pension.

Nothing could be more chaotic than this dual arrangement. Both schemes fundamentally unsound. Report of Director of Trade and Commerce to Governor in December, 1930, after examination of these benefit funds should be matter of grave concern

to Board, teachers and taxpayers of Chicago. Requirements under "Miller Act" in excess of half million dollars and predicted by Director of Trade & Commerce that by 1934 requirements will be in excess of $1,200,000. In other fund, a net deficiency of $37,851,000 and if amortized over period of 40 years it will be necessary to make levy that will produce $2,523,000 annually. Board undoubtedly aware of its inability to keep up its excess payments. Liability today is $650,000.

These benefit funds holding out false promises to thousands of teachers—promises which can never be fulfilled—financial involvements created by this muddle should prompt Board to give subject immediate consideration. One of these systems should be abolished and in place thereof should be established plans that can be financed and will not be headed for the rocks. (From proceedings of Board June 8, 1931, pages 1882-1883.)

193 24¾—Defendants allege that dual pension system so severely criticized by Education Committee of Illinois Senate was due to statutory provisions which provided for two separate and distinct pensions to be paid to each teacher retired from active service and that Senate Bills 528 and 529 were recommended by them as remedy for condition that Cleveland Audit Company defined as a "chaotic arrangement fundamentally unsound."

25—Admit that Elmer E. Burns made application to Board on May 31, 1935 to be retired pursuant to provisions of Section 3 of "Miller Law"; that Superintendent of Schools reported said request to Board, but deny that Board in acting upon said

report departed from any usual custom. Deny that there was any custom relative to acting upon reports of Superintendent of Schools. Allege that Board acts upon each report as circumstances require.

Allege that said request for retirement was made while Senate Bills 528 and 529 were pending before Senate, and that defendant Board was not advised of said request until after each of said Bills had passed Senate and House of Representatives and been delivered to Governor for his signature.

26—Admit that Azile B. Reynolds requested to be retired from active service pursuant to Section 3 of "Miller Law", but alleges that said request was
194 made when each of said Bills was pending in the General Assembly, and each had passed Senate; admit that Archibald Paterson requested defendant Board to be retired pursuant to Section 3 of "Miller Law"; allege said request was made June 17, 1935, after amendment adopted by both Houses and General Assembly, repealing said Section 3. Defendants admit that Superintendent of Schools thereafter presented to Board of Education report recommending that certain teachers therein named be retired pursuant to Section 3 of "Miller Law"; allege that at time said report was presented to defendant Board, Section 3 had been repealed by Senate and House of Representatives, and that final vote on repealing said Section was taken on June 13, 1935, long prior to said report being presented to defendant Board.

27—Admit that after July 12, 1935, defendant Board complied with provisions of statutes of State

of Illinois enacted by passage by General Assembly, of Senate Bills 528 and 529; deny that such acts were arbitrary, illegal, void and unconstitutional; deny that such acts take away property without due process of law; deny that said acts were an attempt to impair obligation of contracts.

195 27½—Allege that public schools of Chicago closed June 14, 1935, for summer, and that teachers were not employed for summer months; that for many years schools operated on a ten month basis, but that due to lack of funds, Board of Education on May 27, 1933 reduced the school year from ten months to nine months, and that at all times since then public schools of Chicago have been maintained for nine month period each year.

28—Admit that Board of Education prints and publishes reports of its proceedings and that said reports are accessible to all members of teaching force.

29—Admit that on January 17, 1935, Board adopted resolution termed "annual school budget", in and by which defendant Board appropriated sums of money required to defray necessary expenses and liabilities of Board.

Allege that said "Annual school budget" was
196 adopted pursuant to provisions of Section 135½ of Act entitled "An Act to establish and maintain a system of free schools." That by terms of said Section, appropriations are not to be construed as approval by Board of any liabilities, but only to be regarded as provision of funds for payment thereof when liabilities have been found valid and legal obligations against Board.

Admit that on page 531 of "annual school budget" appears item

"2—Retirements (Miller Law).....$1,125,000.00"

That on page 534 of "annual school budget" appears

"Y Retirements—Miller Law .....$1,125,000.00"

That on page 539 of "annual school budget" appears

"Retirements—Miller Law .....$1,125,000.00"

197 Paragraph 30. Deny that during the period from date that "Miller Act" went into effect after its signature by the Governor until April 30, 1935, 227 teachers, etc., have been compulsorily retired; deny that of such 227, 184 are living, as alleged in Complaint and that 43 have died; deny that 184 so living April 30, 1935 have been receiving retirement allowance of $1,500.00 annually from retirement until April 30, 1935; deny that except as to those since died, they have received retirement allowance, as alleged, until September, 1935; deny that the persons so alleged to have been retired are entitled to receive same for remainder of their respective lives.

Deny that during period Section 3 of "Miller Act" has been in force up to April 30, 1935, there have been retired under Section 3, 830 teach-
198 ers, etc.; deny that 112 of such employees so alleged to have been retired have died prior to April 30, 1935, leaving 718 still living; deny that of said 830, 291 retired at age 65; deny that of such 291, 268 were living April 30, 1935; deny that 23 of such teachers, etc., have since died; deny that said 268 were receiving annuity of $1,000.00 a year and

that they or any of them were entitled to continue to receive same annuity during the remainder of their lives; deny that of such 830 alleged to have voluntarily retired, 123 retired at age 66; deny that 103 of such 123 were living April 30, 1935 and that 20 have died; deny that said 103 persons, except those who have died, were until September, 1935 receiving $1100.00 a year as retirement annuity under Section 3, and deny that they or any of them are
199 entitled to receive same annuity for remainder of their lives; deny that of said 830 alleged to have voluntarily retired, 122 retired under Section 3 at age 67; deny that of such 122, 9 have died and that 113 received from dates of respective retirements until September, 1935, retirement annuities of $1200.00 per year; deny that any of them are entitled to receive said amount for remainder of their lives.

Deny that of said 830 alleged to have voluntarily retired under Section 3, 96 retired at age 68, and deny that 81 thereof were living on April 30, 1935, and deny that 15 thereof have died; deny that said 81, except those who have died, have received retirement annuities from dates of retirements until September, 1935, in amount of $1300.00 per year; deny that they or any of them are entitled to receive such annuities or any part thereof for remainder of their respective lives; deny that of said 830 alleged to have voluntarily retired under
200 Section 3, 96 retired at age 69; deny that 84 thereof were living on April 30, 1935; deny that 12 of said persons died; deny that of said 84, except those who have died, each received retirement annuities in amount of $1400.00 per year from dates

of respective retirements until September, 1935; deny that they are entitled to receive said annuities, or any annuities, for the remainder of said respective lives; deny that of said 830 alleged to have voluntarily retired under Section 3, 102 voluntarily retired at age 70 or over; deny that of such 102 so alleged to have retired, 69 were living on April 30, 1935 and 33 have died; deny that said alleged 69 persons so retired, except those who have since died, have received from dates of respective retirements until September, 1935, annuities under Section 3 of said Act of $1500.00 a year; deny that they
201 or any of them under Act are entitled to receive any annuity or pension whatsoever during remainder of respective lives.

Defendants deny that it appears from records of Board of Education that in June, 1935 there were recommended for voluntary retirement by Superintendent of Schools under Section 3 not less than 175 persons; deny that such recommendations were placed before the Board and called to attention of defendant Board at regular meeting, June 26, 1935; deny that it appears from said alleged recommendations of Superintendent of Schools that said alleged 175 persons, or any of them, were entitled to be voluntarily retired under said Section 3; deny that only action taken on such recommendations by defendant Board of Education was to refer such communication to General Committee; deny that General Committee never reported further action on said alleged report; deny that all the alleged persons whose names appear on said alleged report made written requests for voluntary retirements; deny that all of said alleged persons whose names

appear on said alleged report were eligible and had
202 met all requirements of law then in force; deny that they were entitled to be voluntarily retired; deny that said alleged persons whose names appeared on said alleged report and such alleged recommendations were purported to be compulsorily retired; deny that Board had no right or authority to retire said 175 persons as charged in said Complaint; deny that said persons, or any of them, were entitled to, or that Board was empowered to retire any of said alleged persons upon a retirement allowance for life.

Paragraph 31. Defendants admit that defendant Board of Education paid to persons retired pursuant to "Miller Law" the annuity pensions required to be paid pursuant to said Law prior to the Act of the Legislature effective in July, 1935; admit that after said amendment became effective said Board paid to each of persons so retired the amounts required to be paid under law as amended, but deny that Complainants were or are entitled to receive further sums of money as pensions or an-
203 nuities; allege that amounts so paid were tendered to and paid to complainants and other teachers similarly situated in full of all pensions or annuities required to be paid under "Miller Law."

Paragraph 32. Defendants deny that there is now in preparation "annual school budget" for 1936, but admit that defendant Board will be required to adopt in the first fiscal quarter of the year 1936 "annual school budget" for that year, and in same will be required to appropriate sufficient money to pay necessary expenses and liabilities of Board to

be paid or incurred during that year, and that it will be required to, and will, adopt a resolution certifying amount of taxes that Board requires to be levied upon equalized assessed valuation of taxable property in City of Chicago for school purposes, but deny that it will or should be required to appropriate and set aside money sufficient to pay pension annuities required to be paid prior to July 11, 1935, and deny that it will levy or cause to be levied taxes in sufficient amounts to pay annuities or pensions in amounts required to be paid prior to amendments to "Miller Law" effective July 11, 1935.

204 Paragraph 33. Defendants deny that teachers who have been retired pursuant to said Act have held themselves as subject to call of Superintendent of Schools of City of Chicago for consultation and advisory service; deny that they have been and are ready, willing and able to give such consultation and advisory service; deny that plaintiffs who have been voluntarily retired pursuant to Section 3 of said Act have been subject to call of said Superintendent or of defendant Board for consultation and advisory service, and have been and are ready, willing and able to give same; deny that pursuant to and as result of alleged compliance with requisites as to length and terms of service and acceptance of provisions of "Miller Act" plaintiffs have become entitled to contractual or quasi-contractual rights therein, and deny that they are entitled to receive for life retirement allowances as alleged in Paragraph 33 of Complaint.

Defendants deny that plaintiffs compulsorily retired, as set forth in Complaint, or those retired upon their application, have rendered any service

whatsoever to defendant Board or have offered or tendered their services in any manner or form; deny that there is any contractual or quasi-contractual relationship between complainants, or any of them, and defendant Board.

205 Paragraph 34. Defendants deny that amendment of "Miller Law" effective July 11, 1935 affected only teachers, principals and educational employees who might thereafter be retired pursuant to provisions of said Act.

Defendants deny that Section 4 of Chapter 131, Revised Statutes of Illinois, has any application to amendment to the "Miller Law," effective July 11, 1935, or is in any way pertinent to issues involved herein.

Defendants deny that "Miller Law" in force prior to July 11, 1935 was intended to provide deferred compensation for services rendered by persons retiring after Law became effective, but allege that amounts to be paid, and that were paid pursuant to said "Miller Law" are pensions, mere gratuities springing from the graciousness and appreciation of the sovereign power, that may be given or withheld at the pleasure of such power.

Defendants deny that amendments to "Miller Law" effective in July, 1935 are in violation of Section 2 of Article II and Section 14 of Article II of Illinois Constitution and of Fifth Amendment to and of Section 10 of Article I of the United States
206 Constitution; deny that said amendment or amendments were invalid and unconstitutional; deny that said amendments attempt to or take away any vested rights or property without due process of law; deny that said amendments impair obligation of contract.

Defendants allege that 1935 Amendment to "Miller Law" repealed said Act as was in effect prior thereto; that said amendment is a full and complete Act in itself, is an enabling Act except insofar as it repeals all powers granted to the Board under previous "Miller Law."

Defendants allege Section 3 of said Act was repealed *in toto*.

Paragraph 35. Defendants deny that plaintiffs, or any of them, are without remedy in premises in a court of law; deny that plaintiffs have any remedy herein; deny that bill herein is filed to avoid a multiplicity of suits or will prevent a multiplicity of suits, but allege that remedy of plaintiffs, if any they have, is in a court of law.

Paragraph 35½. Defendants allege that after the matters and things alleged in Complaint, and before commencement of this suit, to-wit: on August 7, 1935, in Circuit Court of Cook County, John E. Groves and Mary E. Stanton filed their complaint in Chancery No. 25-C-12886, against this defendant, alleging that John E. Groves had been a teacher in City of Chicago for over forty years last past and taxpayer in said City for over twenty years; that his salary for entire year 1935 is $2,817.00 after deducting his contributions to pension fund, and is payable in nine monthly installments, $313.00 each; that Mary E. Stanton will be age 66 November 13, 1935; that she had been a public school teacher nearly 45 years and her sal-
207 ary is $2,103.75 after deducting her contributions to pension fund; that complainants herein filed com-

plaint in their own behalf and in behalf of other taxpayers of City of Chicago who wish to join as additional complainants, and in behalf of all public school teachers and principals recently forcibly retired from service who wish to join as complainants; allege that the complaint then alleges that complainants and all public school teachers in City of Chicago enter service of Board of Education by contract; that relation between teachers and Board is contractual and is so recognized by certain sections of Statute set forth in Complaint.

Paragraph 36. That the Complaint then alleges that prior to April 20, 1917, teachers were elected and appointed annually; that favoritism at that time was shown in election of teachers and that General Assembly, on April 20, 1917, enacted "Otis Law" by provisions of which teachers were granted tenure of office; that their appointments as teachers became permanent without formal action of Board
208 after serving probationary period of three years; that Complaint alleges that teachers are in no sense public officers; are not civil service employees as they are exempt from civil service, but are contract employees; that teachers in employ of Board April 20, 1917 who have been continuously employed since, have contracts that became permanent and indefinite by provisions of that Act and cannot be removed except for cause, and have vested rights under statute; that their rights have become vested property rights by operation of statute, and that repeal or modification of statute cannot legally divest complainants of vested property rights acquired under statute; that the complaint further alleges that besides permanent indefinite contract that com-

plainants have with the Board is a yearly contract which pertains to salaries for each fiscal year, and also to length of the fiscal year, which shall not be
209 less than nine months; that salary of complainant Mary E. Stanton was fixed in annual school budget for nine months at rate of $233.75 per month, and salary of complainant Groves was fixed at $313.00 per month for like period; that complainants accepted yearly salary schedule, performed service after annual school budget adopted, and legally expected to be paid said rates for nine months of year 1935;

Paragraph 37. That complaint then alleges that complainants were contributors to Chicago City Pension Fund, have contributed to that fund for over twenty-five successive years, and are each entitled to withdraw from service of schools and receive $1,000.00 a year for remainder of their lives; that prior to July 1, 1935 there was in force in State of Illinois applicable to public school teachers of Chicago a state pension fund; that teachers sixty-five years old could retire from service and receive from said fund the sum of $1.000.00 annually, and that said pension fund increased at rate of $100.00 per year, and on reaching age seventy, teacher could retire and receive from said State Pension Fund $1500.00; that said two pension funds would amount to $2500.00 a year for life; that combined pensions of $2500.00 is none too large, and in many instances and cases far too small for pensioner's actual needs.

210 Paragraph 38. That complaint then alleges passage at last General Assembly of Senate Bill No. 528 an amendment to School Law; that the Bill is

set forth in the complaint and is now the Act of the General Assembly, which is complained of in the case at bar. The complaint then sets forth amendment to Section 138 of School Law complained of in the case at bar. The complaint then charges that said two Acts of the Legislature are void and of no legal effect and can only apply to teachers whose probationary period of three years has not lapsed. The complaint then alleges that 242 teachers, principals and assistant superintendents were retired July 24, 1935, pursuant to provisions of said amendments. Complaint then charges that said Acts of General Assembly, the acts complained of in case at bar, impair obligation of contracts and contract rights, deprive complainants of property without due process of law, and are contrary to and in direct conflict with and violation of Constitution of United States and Illinois Constitution of 1870; that they violate Article I, Section 10 of United States Constitution; that they violate Article V of United States Constitution; that they violate Section 2 of Article II of Constitution of 1870, and that they violate Section 14 of Article II of Constitution of 1870.

211 Paragraph 39. That complaint then charges that amendment to Retirement Laws passed at last General Assembly as set forth in complaint are void and of no effect because inhabitants of the State have not been granted proportionate representation in the Legislature; that complaint then charges that amendments in question are unfair and discriminate against teachers and are illegal and void.

Paragraph 40. That complaint then charges that in order for a so-called retired teacher to obtain

meager State pension of $500.00 a year as provided in amendment in question, she is still at call of Superintendent of Schools and cannot safely embark in any kind of business or other means of earning a livelihood, and that conditions attached to amendment made entire law unfair, unjust, unequitable and void.

Paragraph 41. Complaint alleges that suit was filed to prevent multiplicity of suits; that complaint then prayed for injunction restraining Board of Education, their attorneys, solicitors, employees acting or assuming to act under authority of the Board, from carrying out or attempting to carry out order of July 24, 1935 retiring the complainants and other teachers, and prayed for an order directing the Board and the Superintendent of Schools to restore the teachers to their former positions.

212 Paragraph 42. Defendants allege that thereafter complainants in said cause appeared before Judge Phillip Finnegan, one of Judges of Circuit Court of Cook County, and moved for an injunction as prayed for in the complaint, and defendant Board of Education thereupon filed its motion in writing to dismiss said complaint and as grounds for said motion defendants set out that plaintiffs by complaint did not state a case as entitled them in a court of equity to any relief from and against defendants; that it appeared by said complaint that no contractual or vested rights were involved; that courts have no power to inquire into motive of General Assembly; that Acts of General Assembly which plaintiffs sought to have declared unconstitutional did not violate any provisions of Constitution of

State of Illinois or the Constitution of the United States.

Paragraph 43. Defendants allege that complete hearing of said cause on said Bill of Complaint was had before Judge Finnegan, and after said hearing in open court, said Judge took cause under advisement and plaintiffs in said cause and defendants therein, who are defendants here, each filed written briefs and thereafter said Judge Finnegan denied motion of plaintiff for temporary injunction and sustained motion of defendants to dismiss complaint, and thereupon, on motion of plaintiffs, plaintiffs were given leave to file amended complaint and defend-
213 ants granted leave to answer or file motion to dismiss within twenty days; that plaintiffs thereupon filed amended complaint which was in substance the same as original complaint filed in said cause but in addition to allegations of original complaint, it was alleged that pension laws applicable to teachers in Chicago were approved by the Legislature on May 31, 1895; that various sections of Pension Law are set forth in amended complaint.

Paragraph 44. That amended complaint, in addition to allegations of original complaint, alleges there was in force in Illinois prior to July 1, 1935, "State Annuity Fund," and that teachers sixty-five years of age could retire from active service and receive from said Fund through Board of Education $1,000.00 annuity and that rate of said pension increased $100.00 a year thereafter, so that on reaching age seventy teacher could retire from active service and receive from State annuity fund $1500.00 per annum for life; that neither the sum received from the City or from the annuity from

the State are intended as bounties or gratuities, but as compensation for services previously rendered for which full adequate compensation was not received at the time services were rendered. In other words, pay withheld to induce long continued and faithful service on part of experienced teachers.

214 Paragraph 45. That amended complaint then sets forth passage of Senate Bill No. 528 amendment of Emeritus Law adopted at 1935 Session of General Assembly of Illinois, the Act which reduces the pension which complainants in said cause term the State Pension, from $1500.00 a year to $500.00 a year, the Act of the General Assembly complained of in the case at bar; that amended complaint charges that said compulsory retirement laws impair vested rights to permanent tenure acquired prior to passage of those laws and impair obligations of the complainants and cannot have retroactive effect; that amended complaint charges that Acts of General Assembly in question are unconstitutional and void as violation of the ordinance of 1787 providing for a government of territory comprising present State of Illinois, in violation of Article IV, Section 4 of Constitution of the United States, are in violation of Section 6, Article IV of Illinois Constitution, are in violation of Section 5 of Article IV of Illinois Constitution.

Paragraph 46. That amended complaint further alleges that compulsory retirement law complained of does not contemplate complete severance of relations between retired teachers and Board of Education, but only for a retirement from active classroom duties with consequent loss of pay and transfer to perpetual duties of being consulted by Superin-

tendent of Schools and of furnishing him with advice for a niggardly annuity of $500.00 a year.

215 Paragraph 47. That amended complaint further alleges that original "Otis Law" which became effective April 20, 1917, became part of teachers' contracts of employment.

That the prayer in amended bill is in substance the same as in original bill. It prays for injunction restraining Board of Education from carrying out order of Board of July 24, 1935, and for an order directing defendants to reinstate teachers retired pursuant to Acts of the Legislature.

Defendants allege that defendants in said cause, who are defendants in this cause, filed their written motion to dismiss said complaint and based said motion upon the same grounds as their motion to dismiss filed to original complaint.

Paragraph 48. Defendants allege that said amended complaint is pending and undisposed of and involves same issues as are involved in the case at bar; that the case of *Groves, et al.* v. *Board of Education, et al.*, Circuit Court No. 35-C-12886, involves validity and constitutionality of Act of the General Assembly amending the "Emeritus Law," the Act that became effective July 11, 1935; that a determination of said cause on said original complaint by the Honorable Phillip Finnegan was and is an adjudication of all issues in the case at bar.

216 Defendants deny that plaintiffs are entitled to relief or any part thereof in said complaint demanded, pray the same advantage of this answer as if they had pleaded or moved the Court to dis-

miss the complaint, and pray to be dismissed with their reasonable costs and charges in this behalf, etc.

Then follows the signature of the said Board of Education of the City of Chicago; of James B. McCahey, President and member thereof; Ernst Buehler, Vice-President and member thereof; of Irwin Walker, Paul Drymalski, Charles W. Fry, Joseph P. Savage, William D. McJunkin, Harry W. Solomon, Joseph J. Salat, William H. Bied, Mrs. W. S. Hefferan, members of said Board; Frank H. Landmesser, Secretary of said Board; and Harry H. Bracket, Auditor of said Board all by Richard S. Folsom, their Attorney; affidavit of R. S. Folsom that he is Attorney for defendants, has read the foregoing Answer, knows the contents thereof and that same is true. Sworn to November 20, 1935.

218 Notice signed by attorney for plaintiffs (filed December 10, 1935) of motion on that date for leave to file written motion to strike answer of Board of Education of City of Chicago, *et al.*, defendants, with receipt of copy by attorneys for defendants.

220 Order entered December 10, 1935 granting leave to plaintiffs to file instanter written motion to strike answer of Board of Education of the City of Chicago, *et al.*, defendants, and setting said motion to strike for hearing on Monday, December 16, 1935.

222 Motion to strike answer filed December 10, 1935. Plaintiffs move to strike answer to complaint filed by Board of Education, *et al.*, defendants, except as to admissions therein contained of facts alleged in complaint and for reasons for said motion show:

First: That answer is uncertain, vague, insufficient and does not state facts showing defendants have any defense to plaintiffs' cause or any part thereof.

Second: That answer sets forth matters that are irrelevant and immaterial and constitute no defense to suit or any part thereof.

Third: That defendants in answer admit the retirement, prior to July 11, 1935, pursuant to provisions of Miller Act in force prior to such date, of plaintiffs, Dodge, Armstrong, Baird, Whigam, Cook, Loomis, Corbett, McClelland, Callahan, Morse,
223 Keen, Coddington, Toole, Dean, Dougherty, Tierney and Woulfe; admit that applications by written requests for retirement were made to defendant Board of Education by plaintiffs Paterson, Reynolds and Burns before July 11, 1935, and do not deny that said last three plaintiffs, at the time of such written requests, had fulfilled and complied with all qualifications for voluntary retirement under Miller Act as same then in full force and effect.

Fourth: Answer does not deny any material allegation of complaint and does not set forth new or additional facts either in defense thereto or in confession and avoidance thereof.

Fifth: That only matters in answer set forth attempting to show that plaintiffs or any of them are not entitled to the relief sought are conclusions of law and argumentative statements, not setting forth facts sufficient to constitute a defense to suit or to any part thereof.

Sixth: That allegations in paragraphs 35½ to 48 of the answer as to another suit pending in chancery

in the Circuit Court of Cook County against said defendants, brought by John E. Groves and Mary E. Stanton as plaintiffs, No. 35-C-12886, setting forth at length a number of the allegations contained in the complaint in such other suit, show on the face of such allegations that such other suit is not brought for same relief as that prayed for in this cause and does not involve the same questions or same alleged rights as are involved in this suit; the said suit in the Circuit Court, as appears from said paragraphs of answer, is one in which it is claimed that defendants have no right under Miller
224 Act as amended in 1935 to retire at age 65 plaintiffs to said suit, which question or claim is not involved in this suit; the only question involved in this suit is right of plaintiffs and others similarly situated, who were retired prior to effective date of 1935 amendments of Miller Act, to continue to receive annuities which it was in Miller Act, as in effect at time of their retirements, provided they should receive for life, and the right of certain other plaintiffs and others similarly situated, who were qualified for voluntary retirement and made written requests therefor prior to time when 1935 amendments became effective, to be so voluntarily retired under said Act as it existed prior to July 11, 1935 and to receive annuities provided for in case of such retirements under the Law as it existed at the time said written requests for voluntary retirement were made.

Sixth (a): That, as appears from said allegations in answer, the only question involved in said Circuit Court case is validity of Miller Act as amended in 1935, insofar as it reduces compulsory

retirement age of teachers and other educational employees to age 65; in suit at bar, the only questions involved are —(1) whether said amendments of 1935 affected rights of plaintiffs, theretofore retired under Miller Act, to continue to receive annuities provided for by said Law as it was in full force and effect at time of their respective retirements, and rights of plaintiffs, who made written requests for voluntary retirements before said amendments went into effect, to be so retired and receive such annuities; and (2) if under said amendments their rights are affected, whether said amend-
225. ments, insofar as they affect their rights and reduce amounts to which they are entitled, are constitutional.

Sixth (b): That, as appears from complaint herein and from allegations of answer as to said Circuit Court suit, the suit at bar is on behalf of teachers and other educational employees heretofore retired under Miller Act before its amendment in 1935, and on behalf of those who, being qualified for voluntary retirement under said Act in force prior to July 11, 1935, made written requests to defendant Board prior to that date for voluntary retirement; Circuit Court suit is brought on behalf of persons who do not desire to be retired, made no request therefor, but on the contrary, claimed they should not be retired and should be allowed to continue in active employment as teachers of defendant Board of Education.

Sixth (c): Plaintiffs in case at bar, and persons similarly situated to them, are not in the same situation, do not have one common right or one common interest with plaintiffs in said suit of *Groves, et al.*

v. *Board of Education*, pending in Circuit Court of Cook County.

Wherefore, plaintiffs pray that all matters in said answer, except admissions therein of allegations of complaint, be stricken and that plaintiffs be granted the relief in said complaint prayed for against said defendants for failure to file an answer setting up a defense to this action. Chester C. Dodge, *et al.*, Plaintiffs, by Allan J. Carter, their attorney.

226 Affidavit of Allan J. Carter that he is Attorney for Chester C. Dodge and the other plaintiffs, and is their duly authorized agent in this behalf; that the foregoing motion to strike answer of Board of Education, *et al.*, defendants, is not interposed for purpose of delay, and in his opinion said motion is well founded in law. Jurat, dated December 9, 1935.

228 Order entered December 16, 1935 (filed December 17, 1935), denying motion of the plaintiffs to strike the answer of the defendants and granting leave to plaintiffs to reply in five days.

230 Reply (filed December 18, 1935) to answer of Board of Education of City of Chicago, *et al.*, defendants. The plaintiffs, for a reply to said answer, say:

1. Plaintiffs reserve all rights of exception to said answer for insufficiency and all rights raised by and based upon the motion to strike said answer, heretofore filed, as in said motion set forth and as set forth upon the hearing of said motion.

2. As to the allegation in last sentence of paragraph 15 in said answer, plaintiffs deny that Miller

Act as amended in 1935 reduced the annuity paid to persons retired pursuant to the Act or affected in any way annuities payable to persons who were retired prior to effective date of said amendments of 1935, or who were qualified for voluntary retirement and had made written request for retirement under said Act prior to the effective date of said amendments.

231 3. Deny allegation in Paragraph 16 of Answer that amounts required to be paid to retired teachers under Miller Act who no longer render service had increased to and was increasing to such vast amounts that unnecessary and unreasonable burden was placed upon taxpayers of the School District.

3a. As to allegations in Paragraph 16 of Answer that in years 1926 to 1934, inclusive, amounts expended by defendant Board for annuities under Miller Act were as therein specifically set forth and as to allegation that it was necessary in January, 1935 for Board to appropriate the amount therein alleged, plaintiffs have no information or knowledge as to the truth thereof sufficient to form belief and insofar as material to issues in cause, demand strict proof.

3b. As to allegation in Paragraph 16 of Answer that defendant Board took into consideration fact that during years set forth, an elementary teacher teaching full time in Chicago public schools received maximum salary as therein alleged, plaintiffs have no information nor sufficient knowledge upon which to form belief as to whether a fact, and insofar as material, demand strict proof; deny allegation in Paragraph 16 of Answer that such teacher would

upon retiring, receive from the "two pension funds" a total of $2500 a year; allege that amount is maximum which any such teacher could have received from such pension and retirement annuity, provided
232 such teacher were compulsorily retired at age 70 and entitled to maximum pension under Pension Law.

3c. Plaintiffs have not sufficient knowledge or information to form a belief as to whether allegation in Paragraph 16 of Answer that defendant Board was compelled by financial condition of country and failure to collect taxes, to make substantial cuts in salaries of all employees, including teachers, or whether as therein alleged, teachers retired on pensions were receiving pensions in larger amounts than a large majority of teachers and employees performing daily services, and demand strict proof insofar as material.

3d. As to allegations in Paragraph 16 of Answer that teachers receiving pensions pursuant to Miller Law as amended and pursuant to Teachers' Pension and Retirement Fund as amended would receive pensions comparable favorably with largest pension paid to other public employees in state, and allegation therein that over 4000 young teachers who had successfully passed examinations provided by school law and who rightfully believed they were entitled to immediate employment as teachers in school system of Chicago, and as to allegation that such young women were better qualified to teach than teachers affected by the amendment complained of, and as to allegation that reductions in salaries of working teachers were necessary because of lack of funds to pay salaries and moneys that retired teachers were

receiving pursuant to Miller Law and Teachers' Pension and Retirement Law, plaintiffs have no in-
233 formation or sufficient knowledge upon which to form a belief, and insofar as material, demand strict proof.

3e. Plaintiffs have no information or sufficient knowledge upon which to form a belief whether the two statements referred to in Paragraph 16 and attached to page 9c of said Answer, were submitted to each member of the General Assembly of Illinois, or as to many of the alleged facts set forth in said two statements and insofar as material, demand strict proof. Plaintiffs deny the total payment to all retired teachers of $2500, $1000 from Pension Fund and $1500 from Educational Fund, as therein set forth, but allege on information and belief that more than half of retired teachers receive substantially less than maximum amount of $2500, and deny that law in effect at the time of said alleged submission of such statements to members of the Legislature provided "for the payment of $1500 per year as a so-called annuity to all retired teachers over and above their regular pension of $1000 per year received by them on retirement from the Pension Fund." Deny that all retired teachers receive $1500 as retirement annuities; deny that all retired teachers receive $1000 from Pension Fund; allege that less than half of retired teachers receive such maximum annuity and that a number much less than the whole receive such maximum amount from the pension fund; deny that all retired teachers receive annuities or pensions from both funds; allege that many receive no allowance whatever from pension
234 fund; deny that all retired teachers receive such

maximum amounts as retirement annuities and from pension fund; deny that the retirement annuity provided for under said amendments constitutes "an additional $500.00 per year as a gift from the Educational Fund."

4. As to allegations in Paragraph 18 of Answer as to period of payments of retirement annuities to Plaintiff Dodge and to other plaintiffs in Paragraphs 19, 20 and 21 of said Answer, admit that no installments of the retirement annuity were paid plaintiffs during July and August, 1935, nor after June, 1935, until September 20, 1935.

5. Deny allegation in Paragraph 20 that many of plaintiffs left the State of Illinois, allege they are all residents of said State; allege they have always been ready and willing since respective retirements, to give consultation and advice upon call of Superintendent of Schools, and have always kept themselves subject to such call; deny that they or any of them have ever been called upon for consultation and advice and have failed or refused to give same.

6. Admit that Plaintiff Tierney was retired August 9, 1933; Plaintiff Corbett was retired December 26, 1934; Plaintiff Dougherty was retired August 9, 1933, as in Paragraph 23 of Answer alleged.

7. As to allegations in Paragraph 24 of Answer, deny that on numerous occasions recommendations of Superintendent of Schools for retirement under Section 3 of Miller Law have been referred to Committees of the Board, temporarily deferred, referred
235 to standing committees of the Board and referred to the Attorney for his opinion; allege that such occa-

sions, if any, were very few over period of years from July 1, 1927, effective date of Section 3 of Miller Law providing for voluntary retirement, until June 26, 1935; allege that in each instance during said period where action deferred or reference made, same was so deferred on some question as to qualifications of one or more teachers, for retirement, who were recommended by Superintendent of Schools for voluntary retirement.

8. As to allegations in Paragraph 24½ of Answer as to introduction and passage of 1935 amendments to Miller Law and of amendment to Section 138 of Otis Law at regular session of 59th General Assembly, plaintiffs have no information and not sufficient knowledge or information upon which to found a belief and insofar as material, demand strict proof; admit that such amendments were filed in office of Secretary of State on July 12, 1935.

9. As to further allegations in Paragraphs 24½ and 24¾ that defendant members of Board were advised that "dual pension system" was "fundamentally unsound", or had been defined as nothing more than a "chaotic arrangement", or been "severely criticized by the Education Committee of the Illinois Senate", plaintiffs have no information or knowledge upon which to found a belief, and require, insofar as material, strict proof.

236 10. As to allegation in Paragraph 27 of Answer that Board after July 12, 1935, complied with provisions of statute of Illinois enacted by passage by General Assembly of Senate Bills Nos. 528 and 529, allege that reduction of amounts paid to plaintiffs as annuities from amounts they were entitled to

under law in force at the time of their retirements and at the time of written requests made for retirement as to Plaintiffs Burns, Reynolds and Paterson were not in compliance with provisions of statutes of State of Illinois.

11. Plaintiffs not informed and have no knowledge sufficient to found a belief as to allegations in Paragraph 27½ of Answer that due to lack of funds to maintain schools and pay teachers, defendant Board on May 27, 1933, reduced school year to nine months, and demand strict proof insofar as material.

12. Deny allegation in Paragraph 31 of Answer that amounts which were paid and tendered to plaintiffs and other teachers similarly situated were paid in full of all pensions or annuities required to be paid under Miller Law.

13. As to allegations in Paragraph 33 of Answer purporting to deny that plaintiffs offered or tendered their services in any manner since their several retirements, allege that each of them have at all times since their several retirements been ready and willing and held themselves subject to call of
237 Superintendent of Schools of Chicago for advisory service and consultation and have not nor has any one of them ever failed or refused to give such advisory service or consultation when called upon for same by said Superintendent.

14. Deny allegations in Paragraph 34 that amounts to be paid and that were paid to plaintiffs pursuant to Miller Law "are pensions, mere gratuities springing from the graciousness and appreciation of the sovereign power that may be given or withheld at the pleasure of such power."

15. Admit, as alleged in Paragraph 35½ of Answer that John E. Groves and Mary E. Stanton before commencement of this suit filed complaint in chancery in the Circuit Court of Cook County, No. 35-C-12886, against defendant Board and others.

15a. Deny that complaint in Groves case was filed on behalf of persons as stated in Paragraph 35½ of Answer; allege that as appears from complaint filed in said cause of Groves *et al.*, complainants therein brought said suit "in their own behalf, in behalf of such other taxpayers of said City of Chicago who may wish to join as additional Complainants, and in behalf of all other public school teachers and principals recently and forcibly retired from service as hereinafter described and who wish to join also as Complainants, but for none others, this Bill of Complaint is not intended as a class suit and binding upon any one not made an actual party hereto and by name also."

16. As to allegations in Paragraph 36 of Answer that in Complaint in Groves suit it is alleged
238 that complainants therein have vested rights under the statute and that those rights have become vested property rights by operation of the statute, and that the repeal or modification of the statute cannot legally divest complainants of such vested property rights so acquired under the statute, plaintiffs herein allege that such rights so referred to in suit of *Groves, et al.* v. *Board of Education,* as appears from the complaint in that suit, are the rights therein claimed to "permanency of tenure" and of complainants in that suit to remain in active teaching service of defendant Board, regardless of having

attained age 65 which more fully appears from the original complaint in the Groves suit as follows:

> "That three years thereafter," (referring to a three year period after the effective date of the said Otis Law which went into effect on April 20, 1917) "towit: on April 20, 1920, the contracts of these complainants with said Board of Education became PERMANENT and indefinite as to length of time said contracts would run or continue; * * * that under the aforesaid Statutes" (referring to said Otis Amendments) "the status and employment of your Complainants were determined by merit only and their appointments have become PERMANENT and subject ONLY to the rules of the Board of Education concerning conduct and efficiency, and subject to removal, dismissal, discharge or retirement for CAUSE only in the manner therein provided in said tenure laws"; (referring again to said Otis Amendment) "and that their respective rights"
>
> (That such rights are the claimed rights of complainants in that case to continue in active teaching service of defendant Board and to "permanency of tenure," under Otis Law, is shown by language in said complaint as follows:)
>
> "(and all other teachers with the same tenure rights) became VESTED PROPERTY RIGHTS UNDER SAID STATUTES SET FORTH in Paragraph five (5) *supra;* that their respective rights have become VESTED PROPERTY RIGHTS by operation of said statute, these Complainants state the fact to be that
> .239 not even a repeal or modification of said statute can legally divest these complainants of their vested property rights so acquired as aforesaid."

The foregoing extracts in quotations are verbatim from Paragraph 9 of original bill of complaint in

Groves case and as appears from context, the "statute" or "statutes" therein referred to are statutes which were in Paragraph 6 designated as "Teachers' Tenure Laws, *supra*, commonly known as the 'Otis Laws'," extracts from which as to permanency of employment of teachers after probationary period are quoted in Paragraph 5 of complaint in Groves suit in Circuit Court of Cook County.

16a. Allege that Groves suit is not under the Miller Law, as is present suit, but is under Otis Amendments, particularly Otis Amendment as to permanency of teachers in their positions as active teachers in the Chicago Public schools after three year probationary period.

17. In reply to allegations in Paragraph 38 and other paragraphs of Answer purporting to set forth allegations in complaint in the Groves suit pending in the Circuit Court, plaintiffs allege that that suit is brought under Otis Amendments; and that it is therein claimed that the attempt of defendant Board to compulsorily retire complainants therein was in violation of Otis Amendments; and that the rights and claims of complainants therein were under Otis Amendments and the alleged provisions thereof for "permanency of tenure", and not under "Miller
240 Act", is further shown by allegation in original complaint in Groves suit, Paragraph 15, as follows:

"(15) These Complainants further show unto your Honors that as to all teachers and principals in the Chicago public schools whose tenure had become fixed after three years of continuous service prior to July 11, 1935, said compulsory retirement laws above set forth have no legal effect,

are inoperative and void as to them as will more fully appear hereafter; that at most said compulsory laws can only apply to those teachers already in the service whose probationary period of three years has not elapsed and to those teachers who enter the service now for the first time."

18. Replying to allegations in Paragraph 35½ to and including 48 of Answer, allege that suit brought by Groves against Defendant Board and others in the Circuit Court is not based on same rights as are involved in suit at bar is apparent from allegations in original complaint in Groves suit, paragraphs 26 and 27, which are not set up or referred to in said paragraphs in said Answer in this suit, which allegations are as follows:

"(26) These Complainants further show unto your Honors that if they are not restored to their former positions and are compelled to bring numerous suits at law to collect their monthly installments of salaries as they become due and payable under the Statute of Illinois, the bringing of so many suits at law, and the expense, delays and harrassment which would be incident thereto, from the very nature thereof renders these two Complainants' legal remedies incomplete and inadequate, besides such legal remedies would not protect Complainants' permanent tenure rights or pension rights, wherefore Complainants are without an adequate remedy at law, in that there is no remedy at law as complete, practicable, and efficient to the end of and for the prompt administration of justice as the remedy in equity, and the intervention of a court of equity will prevent a needless multiplicity of suits, which, these Complainants are informed, is one of the favorite grounds for the equity jurisdiction in both State and Federal Courts."

"(27) These Complainants further state that at their present ages, their normal expectancies of life as shown by annuity or life tables is more than ten years; that if not restored to their former positions or positions of equal rank as regards
241 their respective salaries, the loss to each of these Complainants in salary alone will exceed the cash sum of three thousand dollars exclusive of interest and costs within the next two years, an amount sufficient to give the Federal Courts jurisdiction along with the other Federal questions involved as shown elsewhere in this Bill of Complaint."

18a. Replying to Paragraphs 35½ to 48 inclusive of Answer, allege that Groves suit does not set forth same rights and not based on same claims as suit in this case; allege this is apparent from language in original complaint in Groves case, Paragraph 29, as follows:

"These Complainants further state they are able, competent, and just as efficient as they were at the close of school in June, 1935, and are willing and wish to resume their former positions upon the opening of school in September, 1935; * * * that one stroke of your Honors injunctional pen will put a stop to the aforesaid wholesale ousting of some of Chicago's most efficient and capable servants—the illegal retirement of 242 teachers and principals as aforesaid." (The underscoring is ours.)

18b. Replying to Paragraphs 35½ to 48 inclusive of Answer in regard to suit brought by *Groves, et. al.* v. *Defendant Board* in the Circuit Court, plaintiffs allege that the following matters are contained in the prayer in the original Bill of Complaint in the Groves suit and also in the amended Bill of Com-

plaint therein, some of which are referred to or partially set up in substance in the Answer herein, but quotations from which show more clearly than appears from the Answer that said suit is an entirely different suit to obtain entirely different and other relief and based upon entirely different claims and rights from claims and rights upon which suit at bar is based. Such quotations from prayer in said Complaint in the Groves suit, which are the same in the Amended Complaint, are as follows:

242 "that the Court issue an injunction order directing said Board of Education and the Superintendent of Schools to restore these Complainants to their former status, positions and conditions;"

"that a like order issue restoring as many more of the 240 teachers and principals retired July 24, 1935 as who may wish to remain as teachers and principals and who do not voluntarily retire of their own free will;"

"that said Board of Education and Superintendent be enjoined from thereafter dismissing, removing or retiring the Complainants, or any of them, from their respective status, positions and conditions;"

"that said Board of Education and the Superintendent of Schools be commanded to order and cause the several persons, purported to be assigned to take the respective positions of these Complainants and all others forcibly retired on July 24, 1935, to desist and refrain from interfering, or attempting to interfere with Complainants and others respectively in their positions and the performance of their respective classroom duties, as held by them prior to July 24, 1935;"

18c. Allege that the prayer in the Groves suit is on behalf of Complainants therein and of any others

who wish to join in claiming they should not be removed from actice service as teachers and should continue to receive salaries as active teachers in the public schools of Chicago regardless of having attained age 65 or over, is apparent from next clause of prayer in original Bill of Complaint and amended Complaint in Groves suit, which as there appears is intended to be general and to apply to all prayers and parts thereof theretofore set forth, and is as follows:

> "That all of said orders include as many of the 240 other teachers and principals as wish to be retained in Chicago's public school system;"

18d. Allege that the remaining portions of said prayer following said last quotation consist only of prayer that on final hearing temporary injunction prayed for be made final; prayer for general relief; prayer for summons and answer; general prayer
243 for injunction "in the manner and form as said injunction is prayed for and set forth in the prayer for relief, being Paragraph No. 30 of this Bill of Complaint."

18e. In further reply to Paragraphs 35½ to 48, both inclusive, of the Answer regarding the Groves case in the Circuit Court of Cook County, plaintiffs allege that all quotations above set forth in this Reply are contained in same language in original Bill of Complaint in the Groves case and also in Amended Complaint in that case, including quotations above from prayer; allege that it is plain therefrom that the issues involved in the case at bar, interests of plaintiffs herein, the claims and rights of plaintiffs herein, and the grounds upon

which such claims and rights are based, are different and wholly dissimilar from the issues in the Groves suit, the interests of complainants in that suit, the claims and rights asserted by them, and the grounds upon which such claims and rights are based in that suit.

19. Allege that it appears from Groves case and Complaint and Amended Complaint therein and from above quotations from said Complaint, that the remedy and relief sought in that case are entirely different and of an entirely different nature from the remedy and relief sought by plaintiffs in case at bar.

Followed by the signatures of the 20 original plaintiffs by Allan J. Carter, attorney and agent in that behalf.

244 Affidavit of Allan J. Carter that he is attorney and agent in this behalf of plaintiffs; has read foregoing Reply, is familiar with contents and matters and things therein set forth, except matters therein stated to be on information, and that all matters and things in said Reply except matters therein stated to be on information, are true. That as to matters stated to be on information, affiant has no knowledge thereof sufficient to found a belief. Sworn to December 18, 1935.

246 Order entered December 19, 1935, granting leave to Rose Conley and others to intervene in said cause and to file Intervening Petition and Complaint within 10 days from December 18, 1935.

248 Intervening Petition and Complaint of Rose Conley and 67 other teachers, principals and other edu-

cational employees hereinafter named to join in the Complaint filed herein as Intervening Plaintiffs, filed December 28, 1935, alleges

Paragraph 1—That pursuant to leave granted by order of Court given, Rose Conley and 67 others hereinafter named, by Allan J. Carter, their attorney, enter the appearance of each as Intervening Plaintiffs. Names of said Intervening Plaintiffs are set forth in Paragraphs 2 to 7 hereof, that is to say:

249 Paragraph 2—The following Intervening Plaintiffs have been compulsorily retired under said Miller Act at an annuity as therein provided for to each of $1500 a year for life: Rose Conley, Lydia C. Compton, Virginia Morrison, Mary A. Noonan, Mary A. Woods, Laura B. Ayers, Eleanor Slattery.

Paragraph 3—That the following voluntarily retired at ages 70 or over at an annuity as provided for in said Act to each of $1500 a year for life: Cecelia Johnson, Luella Heinroth.

Paragraph 4—The following voluntarily retired after July 1, 1927 and before July 1, 1929:

(A) Of whom the following so retired at age 65 at an annuity to each of $1000 a year for life: Helen E. Ferguson, Caroline M. Searles.

(B) That the following retired at age 66 at an annuity of $1100 a year for life: Clara E. Nelson.

Paragraph 5—That the following voluntarily retired under said Miller Act after July 1, 1929, and before June 12, 1935:

(A) Of these, the following so retired at age 65 at an annuity as provided in said Miller Act to each

of $1000 a year for life: Sara F. Clinton, Cecelia M. Gavin, Hilda C. Johnson, Esther M. Meyer, Jane L. McBride, Sarah C. McGill, Mary A. McKeown, Inez M. Oldham, Florence C. Peacock, Elizabeth R. Rawson, Margaret E. Reed, Marcella Riley, Harriet B. Rogers, Helen F. Sheehy, Jennie E. Slack, Adelaide M. Thomason, Annie M. Stoeckel.

(B) That each of the following retired at age 66 at an annuity as provided in said Miller Act, to each, of $1100 a year for life: Mabel Corey, Lyman B. Mansell, Florence A. McCarthy, Effie C. Tinen.

(C) That each of the following retired at age 67 at an annuity as provided in said Miller Act, to each, of $1200 a year for life: Elizabeth M. Connolly, Catherine G. Ford, Abigail Hanrahan, Edith S. Hooper, Jane A. Moloney, Sarah Street, Helen E. Thiel.

(D) That each of the following retired at age 68 at an annuity as provided in said Miller Act, to each, of $1300 a year for life: Katherine Flaherty, Marie K. Snyder, Mary E. Weldon, Mary McCulloch.

(E) That each of the following retired at age 69 at an annuity as provided in said Miller Act, to each, of $1400 a year for life: Jennie M. Dignum, Walter E. Johnson, Minnie E. O'Donoghue (whose name shows on the School Board record as to her retirement as Minnie E. Donoghue) Mary E. Twohig, Emily Wincher.

Paragraph 6—The following Intervening Plaintiffs made written requests to the Board of Education during the months of May and June, 1935, for

voluntary retirement under the Miller Act. Superintendent of Schools of the City of Chicago recommended that they should be retired from active service in accordance with said written requests. Said recommendations as more fully set out in the Com-
251 plaint, were not acted upon by said Board except to defer action at a meeting held June 26, 1935, and at a meeting on July 24, 1935, Defendant Board adopted a report of the Superintendent of Schools purporting and attempting to compulsorily retire as of age 65 or over all of such Intervening Plaintiffs under the Miller Act as amended in 1935 at an annual annuity of $500 each.

(A) Of these, each of the following had in June, 1935, attained age 65 and was entitled on said written request to be retired under the Miller Act as effective in June, 1935, at an annuity of $1000 a year for life:

Recommended by Superintendent for retirement, as appears from printed proceedings of Board of June 26, 1935, No. A-35263 (Exhibit "N" attached to Complaint) (Rec. 105-106; Abst. 76) Leah D. MacLachlan.

Recommended by Superintendent for retirement, as appears from printed proceedings of Board of June 26, 1935, No. N-35263 (Exhibit "O-2" attached to Complaint) (Rec. 111-112; Abst. 78) Mattie De Crouch, Katherine G. Walsh.

Recommended for retirement by Superintendent, as appears from printed proceedings of Board of June 26, 1935, No. D-35242, pages 1402 and 1403; Katherine Sheahan.

(B) Of these, each of the following had in June, 1935, attained age 66 and was entitled on said written request to be retired under the Miller Act as effective in June, 1935, at an annuity of $1100 a
252 year for life:

Recommended for retirement, as appears from printed proceedings of said Board of June 26, 1935, No. A-35263: (Exhibit "N" attached to Complaint) (Rec. 105-106; Abst. 76) Agnes A. Hawkshaw.

Recommended for retirement, as appears from printed proceedings of said Board of June 26, 1935, No. N-35263: (Exhibit "O-2" attached to Complaint) (Rec. 111-112; Abst. 78) Mary H. Cullen, Clarence E. Johnson, Jessie M. Livermore.

(C) Of these, each of the following had in June, 1935, attained age 67 and was entitled on said written request to be retired under the Miller Act as effective in June, 1935, at an annuity of $1200 a year for life:

Recommended for retirement, as appears from printed proceedings of Board of June 26, 1935, No. A-35263 (Exhibit "N" attached to Complaint) (Rec. 105-106; Abst. 76) Annie J. Beattie, Julia Carver, Anna F. Mullay, and as appears from printed proceedings of Board of June 26, 1935, No. N-35263 (Exhibit "O-2" attached to Complaint) (Rec. 111-112; Abst. 78) Jessie L. Hobson.

(D) Of these, the following had in June, 1935, attained age 68 and was entitled on said written request to be retired under the Miller Act as effective in June, 1935, at an annuity of $1300 a year for life:

Recommended for retirement, as appears from printed proceedings of said Board of June 26, 1935, No. N-35263; (Exhibit "O-2" attached to Complaint) (Rec. 111-112; Abst. 78) Julia A. Sullivan.

(E) Of these, the following had in June, 1935, attained age 69 and was entitled on said written request to be retired under the Miller Act as effec-
253 tive in June, 1935, at an annuity of $1400 a year for life:

Recommended for retirement, as appears from printed proceedings of said Board of June 26, 1935, No. A-35263: (Exhibit "N" attached to Complaint) (Rec. 105-106; Abst. 76) Gertrude F. Corrigan.

Recommended for retirement, as appears from printed proceedings of said Board of June 26, 1935, No. N-35263: (Exhibit "O-2" attached to Complaint) (Rec. 111-112; Abst. 78) Clara L. Bauer, Lucy Laing, Sarah Jessie Root.

Paragraph 7. Intervening Plaintiff John W. Shepherd had in June 1935 attained age 67 and was until June 28, 1935, in the service of defendant Board as teacher in the public schools of Chicago and had been for more than 22 years, and, during last 20 years, more than 16 years. Said John W. Shepherd made written request for voluntary retirement in June, 1935, which request was received by Superintendent of Schools before the end of June, 1935. He was not included in any recommendation of said Superintendent for voluntary retirement, but, as appears from original complaint, by action of defendant Board on July 24, 1935, said Board adopted a report attempting to compulsorily retire said

Shepherd under the Miller Act as amended in 1935 at an annuity of $500. Said John W. Shepherd was entitled to voluntary retirement on his written request at an annuity of $1200 a year for life.

254 Paragraph 8. Each of the Intervening Plaintiffs named in Paragraph 2 is one of the persons referred to in original Complaint as one of the retired teachers, principals, etc., compulsorily retired from active teaching in the public schools of Chiago prior to July 11, 1935, by defendant Board and is similarly situated to original plaintiffs Dodge, Cook, Loomis, Whigam, Armstrong, Morse, Keen, Coddington and Toole, and each such Intervening Plaintiff was compulsorily retired under the Miller Act from active teaching in the public schools of said City of Chicago and from active service in such employment of defendant Board by appropriate proceedings of said Board, and at the time of his retirement had attained age 70 or more and had served in the public schools of said city for 20 or more years, and that defendant Board in so compulsorily retiring each of said Intervening Plaintiffs specifically provided that each was retired under said Miller Act upon an annuity of $1500 a year thereafter for life, as in said Miller Act provided.

Paragraph 9. Each of Intervening Plaintiffs named in Paragraphs 3 and 4 is one of the retired teachers, principals, etc., who voluntarily retired under the Miller Act as amended in 1927, and prior to its amendment in 1929, from active teaching in public schools of Chicago and is similarly situated to original Plaintiff McClelland, and each made writ-
255 ten request for retirement, was retired from active teaching, and at the time of such respective retire-

ment had attained the age as shown as to each in Paragraphs 3 and 4, and each had served in the public schools of Chicago for 15 years or more immediately prior to retirement, and upon retirement each was entitled to an annuity for life of the amount each year as shown as to each in Paragraphs 3 and 4.

Paragraph 10. That each of plaintiffs named in paragraph 5 is a retired teacher, principal, or educational employee, voluntarily retired under the Miller Act as amended in 1929 after July 1, 1929 and before July 11, 1935, is similarly situated to original plaintiffs Baird, Corbett, Callahan, Dean, Dougherty, Tierney and Woulfe; each made written request for retirement and was thereupon so retired from active teaching, and that at the time of such retirement each had attained age as to each shown in
256 Paragraph 5 and had within the last 20 years prior thereto served in the public schools of Chicago for an aggregate of 15 or more years and had served in the public schools of the United States for 25 or more years.

Paragraph 11. That each of Intervening Plaintiffs named in Paragraphs 6 and 7 is one of the teachers, principals, or other educational employees, who during May and June, 1935, made written request for voluntary retirement under the Miller Act as same was then in force and before the amendment of 1935 became effective, had each then attained age shown as to each in said paragraph 6, and that the service of each during the 20 years prior to June, 1935, aggregated 15 years or more in the Chicago public schools and 25 years or more in the public schools of the United States, and that each at the time of such application was entitled under

the law to voluntary retirement and to receive thereafter for life an annuity in the amount as shown as to each in Paragraphs 6 and 7.

Paragraph 12. Intervening Plaintiffs adopt the allegations in said Complaint with same effect as if herein again inserted and repeated at length and
257 applied to them, and each joins in the prayer of original Complaint and every paragraph thereof as fully as if each had been specifically and originally named as plaintiff in the original Complaint.

Paragraph 13. Intervening Plaintiffs pray that the pleadings heretofore or hereafter filed for original plaintiffs stand as like pleadings for Intervening Plaintiffs, as if each Intervening Plaintiff was named as co-plaintiff with original plaintiffs and that any pleadings which have been or may hereafter be filed on behalf of defendants to pleadings of original plaintiffs also stand as to Intervening Plaintiffs.

Paragraph 14. Intervening Plaintiffs pray that in the orders already entered and proceedings had herein and in any further proceedings, orders and decrees said Intervening Plaintiffs be severally considered and their rights be adjudicated as fully as if they had been made co-plaintiffs with original plaintiffs.

Paragraph 15. Intervening Plaintiffs pray that each be granted full relief under the prayer and each paragraph, of original complaint and that they be given benefit of all allegations in the original complaint and be granted all the relief prayed for therein as if such allegations and prayer for relief were herein set forth in full and as if they had

258 originally joined as co-plaintiffs in said original complaint, and also pray for other, further and different relief as equity may require, etc.

Signed on behalf of all Intervening Plaintiffs by Allan J. Carter and Alfred R. Bates, as attorneys and agents.

Sworn to December 28, 1935, by Alfred R. Bates, an associate of said Allan J. Carter, as one of the attorneys, as agent and on behalf of Intervening Plaintiffs named in Petition and Intervening Complaint.

260 Order, entered March 3, 1936, on motion of Richard S. Folsom, Attorney for defendants, that answer of defendants to original complaint stand as answer to intervening complaint of Grace L. Ackley and 861 other intervening plaintiffs filed November 12, 1935 and intervening complaint of Rose Conley and 67 other intervening plaintiffs filed December 28, 1935.

262 DECREE (final).

Order, entered March 3, 1936, on motion of plaintiffs for injunction in accordance with prayer of bill of complaint filed herein, intervening complaint of Grace L. Ackley and 861 other intervening plaintiffs filed November 12, 1935, and intervening complaint of Rose Conley and 67 other intervening plaintiffs filed December 28, 1935 adopting allegations and prayers of the original complaint, and on motion of City of Chicago, Edward J. Kelly, Mayor of said City, Gustave A. Brand, City Treasurer, Robert B. Upham, Comptroller of said City, that cause be dismissed, in which motion defendants,

Board of Education of the City of Chicago, James B. McCahey, President and member of said Board; Ernst Buehler, Vice-President and member of said
263 Board; and the other defendants who are members of said Board, and defendant, the Secretary, and defendant, the Auditor of said Board, join; and upon the sworn answer of the Board of Education of the City of Chicago and of the defendants, the President, Vice-President and members of said Board, and defendants, the Secretary and Auditor of said Board, which answer was by leave of Court allowed to stand as answer to the intervening complaints filed herein, denying that plaintiffs are entitled to any of the relief prayed, and praying that suit be dismissed for want of equity.

The Court having set said respective motions for hearing and having begun said hearing, and all parties being before the Court, said plaintiffs and defendants, by counsel, in open Court stipulated and agreed that cause proceed to final judgment, whereupon plaintiffs filed their replication, said replication to stand as replication of all intervening plaintiffs above referred to, and Court proceeded with trial of cause, and Court having considered pleadings and motions and evidence offered by parties, and oral and written arguments of counsel for respective parties, and being fully advised, finds that plaintiffs' complaint is insufficient in law or equity and that plaintiffs have not stated or made such
264 a case as entitles them or any of them to any relief from or against defendants, or any of them, touching matters contained in such complaint, or any such matters.

Therefore ordered, adjudged and decreed that plaintiffs' motion for injunction be and same is denied; that complaint be and same is dismissed for want of equity at plaintiffs' cost.

To entry of which order plaintiffs and intervening plaintiffs, by their attorney present in open Court, duly accept.

266 Order, entered March 3, 1936, granting leave to plaintiffs and intervening plaintiffs to present, settle and file report of the proceedings at the trial within sixty days from that date.

268 Notice of appeal filed March 6, 1936, directed to attorneys for all defendants.

268-276 Paragraph 1. Gives notice that the 945 persons therein named, being all of the original plaintiffs to the complaint (Rec. 3; Abst. 1) and all of the Intervening Plaintiffs named in said Intervening Petition of Grace L. Ackley and more than 800 others (Rec. 144; Abst. 91) and in said Intervening Petition of Rose Conley and 67 others (Rec. 248; Abst. 164) (except Intervening Plaintiffs Mary DeL. Bowen, Warren C. Hawthorne, Joseph H. Sheffield and Jessie M. Livermore, who do not join in the
276 appeal as Plaintiffs-Appellants hereby appeal to Supreme Court of Illinois from final judgment, order and decree entered herein in Superior Court of Cook County, Illinois, March 3, 1936, wherein and whereby Trial Court found, decided, ordered and decreed that plaintiffs' motion for injunction be and same was denied, and that complaint be and same was dismissed for want of equity, and that plaintiffs take nothing by their suit and that defendants go hence without day.

Paragraph 2. Plaintiffs-Appellants jointly and severally pray that final judgment, order and decree entered March 3, 1936 be reversed and cause remanded to Superior Court, with directions to enter decree directing issuance of injunction and other orders prayed in complaint, and directing the granting of other or different relief to which
277 plaintiffs may or shall be entitled. Signed on behalf of Chester C. Dodge and all of the 944 other Plaintiffs-Appellants thereinabove named, by Allan J. Carter, their Attorney of record.

Receipt of foregoing notice acknowledged on March 6, 1936, by defendant, Board of Education and defendants who are the members and officers thereof, by Richard S. Folsom, their attorney, and by City of Chicago and by defendants who are the Mayor, City Treasurer and Comptroller thereof, by Barnet Hodes, their attorney.

279 Proof of service of notice of appeal addressed to Richard S. Folsom, Attorney for Board of Education, *et al.*, Defendants-Appellees, and Barnet Hodes, Attorney for City of Chicago, *et al.*, Defendants-Appellees, notifying them that Chester C. Dodge and the 944 other Plaintiffs-Appellants did, on the 6th day of March, 1936, file with Clerk of Superior Court written notice of appeal to Supreme Court of Illinois, copies of which are herewith served upon them, dated March 6, 1936, followed by acknowledgment by Richard S. Folsom and Barnet Hodes, Corporation Counsel, Attorneys for defendants, of receipt, March 6, 1936, of a copy of said notice and a copy of said notice of appeal filed with Clerk of Superior Court therein mentioned.

281 Appeal bond $250.00, approved and filed March 6, 1936, with Chester C. Dodge, *et al.* (naming all of the 945 original Plaintiffs and Intervening Plaintiffs who are named in said notice of appeal) (Rec. 268-276; Abst. 175) as principals, and Glens Falls Indemnity Company, a corporation, as surety unto Board of Education of the City of Chicago, *et al.* (naming all of the other defendants) to secure costs,
289 interest and damages rendered and to be rendered in case said judgment of March 3, 1936, is affirmed by the Supreme Court.

298 Order, entered March 6, 1936, approving appeal bond of Chester C. Dodge and 944 other plaintiffs in the penal sum of $250.00, with Glens Falls Indemnity Company, a corporation, as surety, and ordering the same filed.

300 Praecipe for record filed March 9, 1936, directing the Clerk of the Superior Court of Cook County to make up complete authenticated transcript of record, listing twenty-nine different items to be included as they appear in said record and are abstracted herein. Dated Chicago, March 9, 1936.
302 Signed by Allan J. Carter, Attorney for Plaintiffs-Appellants. Receipt acknowledged on March 9, 1936 of a copy of the foregoing praecipe for transcript, by Richard S. Folsom, Attorney for Board of Education of the City of Chicago and individual Defendants-Appellees who are members and officers of said Board, and by Barnet Hodes, Attorney for said City of Chicago and individual Defendants-Appellees who are, respectively, Mayor, City Treasurer and ex-officio School Treasurer and Comptroller of said City.

304 Notice of Appearance, filed March 13, 1936, addressed to Allan J. Carter, signed by Richard S. Folsom, entering appearance in this Appeal of Board of Education of City of Chicago and the individual Defendants-Appellees, who are the President, the Vice-President, and members of said Board, the Secretary and the Auditor of said Board, and of said Richard S. Folsom as their Attorney, dated March 13, 1936, and receipt of copy thereof by Allan J. Carter as Attorney for Plaintiffs-Appellants.

306 Order, entered March 24, 1936, on motion of Attorney for Plaintiffs. Report of the Proceedings at the Trial of said cause, approved, signed, sealed and ordered filed.

308 March 24, 1936, Report of Proceedings at the Trial filed.

Certifies that on November 18, 1935 before Judge Harry B. Miller, Attorneys Allan J. Carter and Alfred R. Bates appeared on behalf of plaintiffs;

Frank S. Righeimer, Ralph Condee and Frank Schneberger appeared on behalf of Board of Education, defendant, and Joseph Grossman, Assistant Corporation Counsel, appeared on behalf of City of Chicago, defendant.

Mr. Carter: The Board in the ordinary manner in which they handle things are working right now on their budget for next year. In their budget for current year 1935, they included a million dollars to make these payments.

Mr. Righeimer: You say we appropriated it—you do not say we have the money—I don't think we have.

309 Mr. Carter: Under the appropriation, that money is earmarked for our people and we are entitled to it.

Unless the Court enjoins them from taking this out of the budget for next year, irreparable damage may be done to this group of people.

Mr. Righeimer: The budget law provides that failure to make an appropriation for a judgment would be no excuse to the Board for not paying the judgment. A judgment can be collected notwithstanding absence of appropriation. It so recites specifically in the School Law—no chance for any hurt.

Wednesday—November 20, 1935

Mr. Righeimer: I want to find out whether you contend this Miller Act is valid or invalid, as amended in 1935.

Mr. Carter: As applied to those who were in service at date of July 11, it is valid.

Mr. Righeimer: Invalid as to the others?

Mr. Carter: Invalid, if construed as applicable to those who had, as we claim, vested rights under facts set forth in our Bill. If they had no vested rights, then it can apply to them.

Mr. Carter: That money was budgeted for, appropriated, and is available.

Mr. Reigheimer: Where do you say it is avail-
310 able in your Bill? You know an appropriation is not money—it is simply a plan to spend when and if you have it.

Mr. Carter: We are entitled to that money during this calendar year.

My second point is that there is this section on statutes which says that wherever there are vested rights, they cannot be interfered with by an amendment.

Mr. Righeimer: We concede that is the law, where there is a vested right.

The Court: You will save time by not reading any law on that.

Mr. Grossman: I have a motion to dismiss the bill of complaint. I am not going to concern myself with the merits of the controversy between the Board of Education and the teachers.

Mr. Righeimer: If you will allow his motion, it will be determinative of the matter.

Mr. Carter: Of course I want to reply to what he has said.

The Court: Insofar as the City is concerned that might be so, I suppose.

Mr. Righeimer: That goes as far as the Board.

The Court: The Board has appeared and joined in the issues by filing an answer.

Mr. Righeimer: Yes, but we join in this motion.

The Court: Yes, I suppose you could. If the bill is not good as far as the City is concerned, it is not good as far as the Board is concerned.

311 Mr. Righeimer: The same argument is true in case of either.

The Court: They are seeking here that they be enjoined and restrained from reducing the amount.

Mr. Righeimer: They have already done it.

Mr. Carter: They are going to reduce it in the future every two weeks.

Mr. Righeimer: When Mr. Grossman points out that every prayer is a prayer for affirmative relief.

The Court: Except that last one which asked to restrain something from happening in the future.

Like all those mandatory cases that were cited in the Lyle case.

The paragraph L would come under those cases. There is exactly the parallel to them here, although the Board has taken out some money, you are asking by this mandatory injunction that they must not do it in the future.

I am inclined to think, gentlemen, that this bill is all right. I am inclined to think that Paragraph L gives the Court equitable jurisdiction. The Board is making this reduction on an act of the legislature.

312 Mr. Carter: A claimed interpretation.

The Court: They have something to base it on. You are asking a preliminary restraining order restraining them from doing what in their opinion the present law says they should do.

The Court should be very careful about issuing temporary injunctions. It should only be done where plaintiff may suffer irreparable damage, if not done, and to keep situation of plaintiff in *statu*

quo until finally decided on a full hearing of the merits on the entire bill what should be done.

Mr. Carter: Cannot we now agree that we will settle this matter of pleadings and your Honor will now give us the earliest date you can in the month of January for a week or three days in the week or something that is adequate to present the whole thing on the merits of the Bill and Answer?

The Court: Your legal points must be passed on here. Your point is that if this act of the Legislature includes the class of people you represent, then it is unconstitutional. If it does not include that class of people, then the Board is doing something they are not justified in doing.

Mr. Carter: That is it precisely.

The Court: If it is eventually decided on the proposition of law against you, it may not be necessary to take evidence. If it is held for you, it may be necessary to take evidence.

Mr. Carter: May I ask Judge Righeimer if they
313 would agree not to pass the new budget for the next year until after we have had our hearing?

Mr. Righeimer: We cannot do that. Anything which is done here in the way of a decree if a decree should be entered, would have to be taken care of without inclusion of the matter in the budget. We have a lot of tax objectors who are watching our budget; we have to budget our appropriations in accordance with the law as it stands. We are constantly harassed by innumerable objections. The law does say specifically that in the case of judgments a previous appropriation is not necessary, different from other appropriation statutes.

December 10, 1935.

Mr. Carter: This is a motion of the Plaintiffs for leave to file a motion to strike the Board's Answer and set it for next Monday afternoon. It is our idea that that will narrow the issues and probably avoid the necessity of putting in evidence.

Mr. Condee: In connection with that, we make a counter motion to strike the statement of claim, or ask that this motion carry back under the old practice.

314 The Court: Mr. Carter, you are going to be given leave to file your motion to strike now.

Monday, December 16, 1935.

(Appearances same as before, except that Mr. Fred V. Maguire, Assistant Corporation Counsel, appeared on behalf of City of Chicago instead of Mr. Grossman.)

Argument on Plaintiffs' motion to strike Answer of defendants Board of Education, *et al.*

Mr. Righeimer: None of the officers has a right to bind the Board and things handed to them do not mean anything until acted upon and approved by Board. That was the occasion for setting up in our Answer that there was no custom, but that we did act on these cases as presented. We did not always act the same day, but from time to time.

(Motion of plaintiffs to strike the Answer of defendants denied.)

Tuesday, December 17, 1935.

315 AZILE B. REYNOLDS, a witness for Plaintiffs, sworn, testified:

Direct Examination by Mr. Carter.

My name is Azile B. Reynolds; I live at 6330 Lakewood Ave., have lived there since prior to July of this year I dated my application for retirement under Miller Act the 10th of June, 1935, but did not hand it in until the 15th.

Q. What was your age at that time?

(Objection by defendant, overruled.)

Mr. Carter: It has to do with the amount of the
316 annuity. A. 67.

Q. What salary were you drawing and in what position at that time were you teaching?

(Objection by defendant as immaterial, overruled.)

The Witness: I was principal of an elementary school. My basic salary was $4800. My monthly checks were $399 for nine months. I had served thirty-seven and one-half years in the public schools.

HENRY FREMONT KEEN, a witness for plaintiffs, sworn, testified:

Direct Examination by Mr. Carter.

My name is Henry Fremont Keen; I live at 5619 Dorchester Ave., and lived there on or before July 1, 1935. I was retired from active service as a

teacher in Chicago, January 31, 1930. My age is now 77 years, 6 months. That was compulsory re-
317 tirement at age 72 under the Miller Law. I did not have any return from the pension fund as distinguished from the Miller Retirement Fund.

Mr. Righeimer: Wait a minute. Do I understand this evidence here is offered for the purpose of supplying proof that is not admitted in the Answer?

Mr. Carter: Yes. Allegations as to this man which were that this was his sole support, I think is denied. It was not admitted.

Mr. Righeimer: That is immaterial.

The Court: Sustained.

Mr. Carter: It is just as material as any of your things about the pension. The question was, whether he has any payments from so-called Pension Fund.

The Witness: Never have had since the inception of that very first. I do not get any payments from that. I contributed under the very first pension. In 1931, the year I was retired, I was receiving a salary of $400 a month or $4000 a year for ten months.

Q. Do you own the place where you live?

(Objection by defendant as immaterial, sustained; exception by plaintiffs.)

318 JAMES E. ARMSTRONG, a witness for Plaintiffs, sworn, testified:

Direct Examination by Mr. Carter.

My name is James E. Armstrong; I was retired as a teacher or principal on February 1, 1929, by compulsory retirement. I was then principal of the Englewood High School and my salary was $6500 from Board of Education; prior to July 1, 1930, from the two funds I was receiving $2500. I was not a contributor to the Pension Fund until 1929, and was required at that time to pay into that fund a little less than $2600. I was 73 years old when I retired and had taught in Chicago for 44 years.

Cross Examination by Mr. Righeimer.

I have drawn from the Pension Fund since I
319 made this contribution $1000 a year for six years since 1929, and have been receiving the full $1500 from the Board up to July (1935) on the other retirement.

CHESTER C. DODGE, a witness for Plaintiffs, sworn, testified:

Direct Examination by Mr. Carter.

My name is Chester C. Dodge. I live at 125 N. Sacramento Ave., and have lived there continuously for the last few years. I was retired by Board of Education under Miller Act in 1927, I think.

Q. How old were you then?

Mr. Righeimer: Just a minute. I have been looking at the Answer and find that the Answer admits all of these people have been retired. I cannot fathom the purpose of this.

The Court: If the Answer admits that, what is the use of putting it in evidence?

Mr. Carter: There are other facts—maybe I am duplicating to some extent.

The Court: Get at the facts that the Answer does not admit.

Mr. Carter: There were some of those that were in this twilight zone that I spoke of. In view of the fact that our motion was overruled, I was not sure how far we would be expected to go.

Q. What was your position when you were retired?

(Objection by defendant, overruled.)

The Witness: Principal of different high schools and elementary schools.

Q. What was your salary when you were retired?

320 (Objection by defendant as immaterial, overruled.)

The Witness: $6300 a year.

Q. Did you have any conference in which any representative of the Board participated in the Fall of 1924, which preceded the presentation to the Legislature of the original Miller bill?

(Objection by defendant as immaterial, sustained.)

Mr. Carter: It has to do with some of the allegations. A thing they have denied as to the Board having drawn that bill and having remodeled it.

The Court: If it is denied in the Answer, go ahead. Objection overruled.

Mr. Carter: Was there such a conference?

The Witness: Well, I do not remember any where members of the Board of Education were present.

Q. Representatives of the Board?

(Objection by defendants sustained.)

The Witness: Mr. Condee was there present.

Mr. Carter: May that stand, your Honor?

The Court: Yes, but Mr. Condee,—I do not think anyone else can bind the Board but members of the Board. He said he was not present at any meeting at which any member of the Board was present.

Mr. Carter: Yes, that is right, but Mr. Condee was there.

Q. Do you know who prepared the Bill that was passed in the Legislature?

Mr. Righeimer: I object to that as immaterial.

The Court: Well, unless he was there and saw the party preparing it.

321 The Witness: Mr. Condee came into the meeting with a bill.

Mr. Righeimer: Wait a minute—I object.

The Witness (continuing): —prepared and said he was presenting it and represented the bill that the Board of Education was approving at that time.

Mr. Righeimer: I ask that that be stricken as self-serving.

The Court: No, I will let it stand.

Mr. Carter: I call Mr. Bates for pure computation from Board's records to show that this custom, your Honor, as to the last three Plaintiffs—that is all that this has reference to.

ALFRED R. BATES, a witness for Plaintiffs, sworn, testified:

Direct Examination by Mr. Carter.

My name is Alfred R. Bates; I am an attorney and partner of Mr. Carter and have been working on this case for several weeks and months. Have had occasion to go through printed proceedings of Board for last five years. I have made a search and examination of proceedings as to voluntary and compulsory retirements.

Q. Will you state to the Court what you find with reference to voluntary retirements, whether there are any exceptions as you found it in those five years, to the Board's passing on a recommendation from the Superintendent of Schools regarding voluntary retirements at the same meeting at which same were presented?

322 Mr. Righeimer: I object as not competent and not proper, the mere fact that he may have made an investigation.

The Court: The reports speak for themselves.

Mr. Carter: They are here.

Mr. Righeimer: And not the best evidence.

Mr. Carter: We could offer them. The only point is that after the three, Burns, Miss Reynolds, who has just been on the stand, and Paterson, as to those three who sought to be retired in June or prior to June, Burns on May 31.

Mr. Righeimer: Miss Reynolds said she did not make her application until after the schools were closed.

The Court: The point of the objection on that is this: He is testifying about what his opinion of what the minutes say—the minutes of the Board are the best evidence.

Mr. Carter: The only thing I am getting at is this—it is a short cut in view of our desire merely to show the custom.

The Court: The minutes will be the best evidence, and as long as there is an objection, the Court will have to sustain it.

Mr. Carter: I have here the pamphlet copies for the year 1934-1935.

Q. Mr. Bates, have you examined those and can you point to the numbers in those pamphlet copies that show any Board proceedings relating to voluntary retirements? A. I have and I can.

323 Q. Will you state the pages? May it be considered, that I am offering those pages in evidence and will substitute photostats?

The Court: Yes.

The Witness: Page 172.

Mr. Carter: Does that show voluntary retirement?

Mr. Righeimer: I object to that.

The Court: Yes, page 172 of what proceedings?

Mr. Righeimer: This report will speak for itself.

The Witness: Of September 4, 1934—proceedings of Board of Education from Official Report of the Proceedings, Printed.

Q. Will you give the date of the pages of the Report and the action by the Board on the Report? A. No. 34326, the one I have been speaking about, was headed "Voluntary Retirement of Teachers."

Mr. Righeimer: I object. All that was asked for was the pages where they appear in the Proceedings and the speeches ought to be cut out.

The Court: It speaks for itself. You may read that page in the record if you want.

324 Mr. Carter: I want to offer substitutes—photostats.

The Court: Yes.

The Witness: The action of the Board appears on page 173 of the Proceedings for the same meeting, adopting the Report.

Mr. Carter: All right. May I stipulate with counsel? Will it be necessary, as you are not questioning the form of the offer to photostat the first page of each of these meetings?

Mr. Righeimer: No.

Mr. Carter: But just the two pages.

Mr. Righeimer: You can introduce them. Under the statutes they are admissible in evidence.

Q. What is the next one? A. Page 236, meeting of September 26, 1934, Voluntary Retirement, Report No. 34343, passed as appears on page 241.

Page 277, meeting of October 10, 1934, No. 34396, Voluntary Retirement, passed page 280.

Page 305, No. B-34442, and on same page No. C-34442, as to Voluntary Retirements, November 1, 1934, passed at same meeting as appears on page 306.

Page 339, November 14, 1934, No. 34489, as to Voluntary Retirements, passed pages 340-341.

325 Page 368, No. 34531, Voluntary Retirements, meeting November 28, 1934, passed at that meeting, page 369.

Page 400, No. 34593, meeting December 12, 1934, passed as appears from minutes thereof on page 402.

Page 441, No. 34652, meeting of December 26, 1934, passed on page 444.

Page 962, No. 34773, meeting of January 23, 1935, as to Voluntary Retirements, passed as appears on page 964.

Page 983, meeting of January 30, 1935, passed as appears on page 984.

Page 1002, two recommendations, No. 34870 and No. 34871, meeting of February 13, 1935. Both passed as appears from minutes of that meeting on page 1008.

Page 1070, meeting of February 27, 1935, No. 34929, passed as appears on page 1074.

Page 1101, No. 34996, meeting of March 13, 1935, passed as appears on page 1104.

Page 1158, No. 35095, meeting of April 24, 1935. Same meeting, page 1163, No. J-35101. Both passed as appears on page 1168.

Page 1126, meeting of April 3, 1935, No. 35044, passed as appears on page 1128.

Page 1318, meeting of May 15, 1935, No. 35159, Voluntary Retirement, passed as appears on pages 1320 and 1321.

That is all I have been able to find in the school year 1934 to 1935. No indexes for that year.

Mr. Carter: I offer those several pages in evidence.

(Objection by defendants overruled.)

(The pages referred to by the witness were received in evidence and are as follows:)

326-366 Plaintiffs' Exh. 5 to and including Exh. 5-mm.

(Photostatic copies of pages of printed proceedings of Board of Education.)

326 Plaintiffs' Exh. 5 September 5, 1934 Page 172 (34236) Voluntary Retirement of Teachers.

Superintendent of Schools recommends that in accordance with their written requests, the following named members of the teaching force be retired from active service, pursuant to the provisions of the Teachers' Retirement Law, effective on the dates specified; There then follow the names of 28 persons, with information as to each showing whether teacher, principal or assistant principal, name of

school, effective date of retirement, date of birth, period of service in Chicago public schools, with month and year when such service commenced and terminated and number of years, and if not continuous, month and year when service re-commenced and again terminated and in each such case number of years of such service during last 20 years, and if Chicago service less than 25 years, period of service in public schools of United States outside of Chicago.

Said 28 so named include Intervening Plaintiffs to this cause Martha V. Bishop, age 65, Chicago service 45 years; Jessie M. Brown, age 65, service 40 years; Elizabeth Campbell, age 69, service 40 years; Kate McKinnie, age 65, Chicago service 20 years, outside service 10 years; Sophie Chenowith, age 68, Chicago service 48 years; Emma Isabel Crosby, age 65, service 40 years; John Michael Davies, age 69, service 35 years; Eula W. Deaton, age 65, service 25 years, 9 months; Huldah L. Fischer, age 67, service 47 years; Frances L. Hevle, age 65, service 46 years; Ida T. Hoffman, age 67, service 47 years; Edith S. Hooper, age 67, service 45 years; Charlotte J. Huscher, age 66, service 40 years; Matilda Krimmel, age 65, service 41 years, last 20 years 16 years; Josephine Krohn, age 67, service 39 years; Susan J. McDonnell, age 69, service 43 years; John B. Moulton, age 65, service 39 years; Amelia L. Petyan, age 65, service 40 years, last 20 years 19 years; Mary E. O'Neill, age 68, service 46 years; Anna G. Peat, age 65, service 45 years; Hans C. Peterson, age 65, service 30 years; Anna J. Powell, age 65, Chicago service 19 years 9 months, outside service 18 years; Amelia Schweitzer, age 65, Chi-

cago service 45 years; Fanny B. Wilson, age 69, service 40 years; Adrienne Yerbury, age 65, service 41 years; Mamie J. Buckley, age 65, service 41 years.

(Note: Except as otherwise stated, "service" in the abstract of this and of all the following exhibits refers to "Chicago Service.")

327 Exh. 5-a September 5, 1934 Page 173

The foregoing Report No. 34236 was on motion of Mr. Buehler approved and adopted by vote on roll call, nine yeas, no nays.

328 Exh. 5-b September 12, 1934 Page 186
(34278) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 5 (Rec. 326; Abst. 193) qualifications of each of 4 persons named for such retirement and effective dates, including Intervening Plaintiffs Emma E. Fuhrman, age 65, Chicago service 18 years, outside 12 years; Cora B. Mowbray, age 66, Chicago Service 46 years; May B. Wallace, age 66, service 44 years.

329 Exh. 5-c September 12, 1934 Page 191

The foregoing Report No. 34278 was on motion of Mr. Buehler approved and adopted by vote on roll call, ten yeas, no nays.

330 Exh. 5-d September 26, 1934 Page 236
(34342) Voluntary Retirement of Teacher

Recommendation of Superintendent in same language and giving in same form as in Exh. 5 (Rec. 326; Abst. 193) qualifications for such retirement

and effective date as to Intervening Plaintiff Lyman B. Mansell, age 65, service 26 years.

(34343) Voluntary Retirement of Teachers.

Recommendation of Superintendent in same language and giving in same form as in Exh. 5 (Rec. 326; Abst. 193) qualifications of 4 persons named for such retirement and effective dates, including Intervening Plaintiffs Anna M. Johnston, age 65, service 44 years; Margaret E. McLaughlin, age 69, service 50 years.

331 Exh. 5-e September 26, 1934 Page 241

The foregoing Reports Nos. 34342 and 34343 were on motion of Mr. Buehler approved and adopted by vote on roll call, six yeas, no nays.

332 Exh. 5-f October 10, 1934 Page 277

(34396) Voluntary Retirement of Teachers.

Recommendation of Superintendent in same language and giving in same form as in Exh. 5 (Rec. 326; Abst. 193) qualifications of each of 2 persons named for such retirement and effective dates, including Intervening Plaintiffs Jennie L. Moore, age 66, service 43 years; Fannie Samuels, age 65, service 34 years.

333 Exh. 5-g October 10, 1934 Page 280

The foregoing Report No. 34396 was on motion of Mr. Buehler approved and adopted by vote on roll call, ten yeas, no nays.

334 Exh. 5-h November 1, 1934 Page 305

(B-34442) Voluntary Retirement of Teacher

Recommendation of Superintendent in same language and giving in same form as in Exh. 5 (Rec. 326; Abst. 193) qualifications of Intervening Plaintiff Abigail Hanrahan named for retirement and effective date, age 67, service 45 years.

(C-34442) Voluntary Retirement of Teacher

Recommendation of Superintendent in same language and giving in same form as in Exh. 5 (Rec. 326; Abst. 193) qualifications of Intervening Plaintiff Katherine E. Ashelby named for retirement and effective date, age 65 years, service 36 years.

335 Exh. 5-i November 1, 1934 Page 306

The foregoing Reports Nos. B-34442 and C-34442 were on motion of Mr. Buehler approved and adopted by vote on roll call, nine yeas, no nays.

336 Exh. 5-j November 14, 1934 Page 339

(34489) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 5 (Rec. 326; Abst. 193) qualifications of each of 5 persons named for such retirement and effective dates including Intervening Plaintiffs Nora P. Grogan, age 65, service 41 years; service for 20 year period immediately preceding, 17 years; Frank W. Rieder, age 70, service 45 years; Helen F. Sheehy, age 65, service 45 years; Jessie L. Stone, age 65, service 45 years; Belle Wilson, age 65, service 40 years.

337 Exh. 5-k and 5-l November 14, 1934 Pages 340-341

338 The foregoing Report No. 34489 was on motion of Mr. Fry approved and adopted by vote on roll call, eight yeas, no nays.

339 Exh. 5-m November 28, 1934 Page 368

(34531) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 5 (Rec. 326; Abst. 193) qualifications of each of the 7 persons named for such retirement and effective dates, including Intervening Plaintiffs Flora V. Renaud, age 68, service 43 years; Mary E. Conners, age 65, service 46 years; Mary O'Brien, age 67, service 45 years; Rose A. Tooney, age 65, service 34 years; Belle Whyte, age 65, service 41 years; Sarah C. Thomas, age 65, service 37 years; during last 20 years, 18 years.

340 Exh. 5-n November 28, 1934 Page 369

The foregoing Report No. 34531 was on motion of Mr. Walker approved and adopted by vote on roll call, nine yeas, no nays.

341 Exh. 5-o and 5-p December 12, 1934 Pages 400-401

(34593) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 5 (Rec. 326; Abst. 193) qualifications of each of the 12 persons named for such retirement and effective dates, including Intervening Plaintiffs Jennie Lintuman, age 66, service 48 years; Therese M. McDermott,

age 66, service 44 years; Mary I. Reeling, age 67,
342 service 46 years; Anna T. Robinson, age 69, service 40 years; Katherine Rogers, age 65, service 43 years; Carolyn I. Smith, age 66, service 33 years; Etta C. Deffler, age 65, Chicago service 18 years, outside 10 years; Mabel C. J. Sherwin, age 65, Chicago service 45 years; Annie C. Fraser, age 65, service 45 years; Julia E. Hilts, age 65, Chicago service 24 years, outside 10 years; Alice S. Wiltshire, age 65, Chicago service 41 years.

343 Exh. 5-q December 12, 1934 Page 402

The foregoing Report No. 34593 was on motion of Mr. Buehler approved and adopted by vote on roll call, ten yeas, no nays.

344 Exh. 5-r December 26, 1934 Page 441

(34652) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in substantially same form as in Exh. 5 (Rec. 326; Abst. 193) qualifications of each of the 3 persons named for such retirement and effective dates, including Intervening Plaintiff Allison W. Augur, age 69, service 32 years; Plaintiff Mary L. McClelland (made original Plaintiff to this suit under her present name of Mary L. M. Corbett) age 66, Chicago service 20 years, outside 23 years; Intervening Plaintiff Florence C. Peacock, age 65, Chicago service 45 years.

345 Exh. 5-s December 26, 1934 Page 444

The foregoing Report No. 34652 was on motion of Mr. Buehler approved and adopted by vote on roll call, eight yeas, no nays.

346 Exh. 5-t January 23, 1935 Page 962

(34773) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 5 (Rec. 326; Abst. 193) qualifications of each of the 13 persons named for such retirement and effective dates, including Intervening Plaintiffs Emma Badger, age 69, service 43 years; Mabel F. Doty, age 65, Chicago service 24 years, outside 11 years; Maud A. Drewett, age 65, Chicago service 43 years; Mary C. McMahon, age 66, service 44 years; Anne E. G. Morse, age 68, service 47 years; Anna J. O'Neill, age 65, service 44 years; Alice H. Quigley, age 67, service 34 years; Agnes Styles, age 65, service 42 years; Adelaide M. Thomason, age 65, service 43 years.

347 Exh. 5-u January 23, 1935 Page 964

The foregoing Report No. 34773 was on motion of Mr. Buehler approved and adopted by vote on roll call, nine yeas, no nays.

348 Exh. 5-v January 30, 1935 Page 983

(34825) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 5 (Rec. 326; Abst. 193) qualifications for such retirement and effective date of Intervening Plaintiff Mary Ellen Yohn, age 67, service 29 years.

349 Exh. 5-w January 30, 1935 Page 984

The foregoing Report No. 34825 was on motion of Mr. Walker approved and adopted by vote on roll call, six yeas, no nays.

350 Exh. 5-x February 13, 1935 Page 1002

(34870) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 5 (Rec. 326; Abst. 193) qualifications of the person therein named for such retirement and effective date.

(34871) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 5 (Rec. 326; Abst. 193) qualifications of each of the 7 persons named for such retirement and effective dates, including Intervening Plaintiffs Elizabeth B. Britt, age 65, service 45 years;

351 (Exh. 5-y February 13, 1935 Page 1003)

Ida A. Hegner, age 65, service 41 years; Mary E. Hassett, age 65, service 46 years; Agnes T. Spellacy, age 65, service 44 years; Mary A. Fanning, age 66, service 42 years.

353 Exh. 5-z February 13, 1935 Page 1008

The foregoing Reports Nos. 34870 and 34871 were on motion of Mr. Buehler approved and adopted by vote on roll call, six yeas, no nays.

354 Exh. 5-aa February 27, 1935 Page 1070

(34929) Voluntary Retirement

Recommendation of Superintendent in same language and giving in same form as in Exh. 5 (Rec. 326; Abst. 193) qualifications of each of the 8 persons named for such retirement and effective dates,

including Intervening Plaintiffs Alice L. Garthe, age 65, service 47 years; Ida K. Gimbel, age 65, service 36 years; Emily Magner, age 65, service 27 years; Myrtle E. Mattison, age 65, service 40 years; Ida Mighell, age 67, service 42 years.

355 (Exh. 5-bb February 27, 1935 Page 1071)

Mary J. Saunders, age 65, service 42 years during last 20 years, 19 years; Flora L. Dahlem, age 65, service 41 years.

Also shows correction in Board Report No. 34871 (Exh. 5-y) (Rec. 351; Abst. 201) of date of birth of Intervening Plaintiff Ida A. Hegner to read January 18, 1870 (age 65 at date of retirement).

356 Exh. 5-cc February 27, 1935 Page 1074

The foregoing Report No. 34929 was on motion of Mr. Buehler approved and adopted by vote on roll call, seven yeas, no nays.

357 Exh. 5-dd March 13, 1935 Page 1101

(34996) Voluntary Retirement of Teachers.

Recommendation of Superintendent in same language and giving in same form as in Exh. 5 (Rec. 326; Abst. 193) qualifications of each of the 8 persons named for such retirement and effective dates, including Intervening Plaintiffs Julia Herrick, age 65, service 34 years; Margaret L. Lord, age 66, service 35 years; Mary McCracken, age 65, service 45 years; Agnes M. Smith, age 67, service 44 years; Sarah G. White, age 65, service 38 years.

358 Exh. 5-ee March 13, 1935 Page 1104

The foregoing Report No. 34996 was on motion of Mr. Buehler approved and adopted by vote on roll call, seven yeas, no nays.

359 Exh. 5-ff April 3, 1935 Page 1126

(35044) Voluntary Retirement of Teachers.

Recommendation of Superintendent in same language and giving in same form as in Exh. 5 (Rec. 326; Abst. 193) qualifications of each of the 2 persons named for such retirement and effective dates, including Intervening Plaintiffs Kate Quarton, age 66, service 40 years; Addie E. Roziene, age 65, service 25 years.

Also retirement of 3 persons named, including Intervening Plaintiffs Julia Herrick and Sarah G. White authorized March 13, 1935 (No. 34996 Exh. 5-dd) (Rec. 357; Abst. 202) be made effective as of April 1, 1935.

360 Exh. 5-gg April 3, 1935 Page 1128

The foregoing Report No. 35044 was on motion of Mr. Buehler approved and adopted by vote on roll call, eight yeas, no nays.

361 Exh. 5-hh April 24, 1935 Page 1158

(35095) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 5 (Rec. 326; Abst. 193) qualifications of each of the 4 persons named for such retirement and effective dates, including Plaintiff Catherine L. Baird, age 68, ser-

vice 35 years; Intervening Plaintiffs Anna S. Gaw, age 65, Chicago service 21 years, outside 19 years; W. W. Reed, age 68, Chicago service 25 years.

362 Exh. 5-ii April 24, 1935 Page 1163

(J-35101) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 5 (Rec. 326; Abst. 193) qualifications of each of the 6 persons named for such retirement and effective dates, including Intervening Plaintiffs Anna Church, age 67, Chicago service 20 years, outside 15 years; Katherine M. Hall, age 67, Chicago service 38 years; Mary A. Rafferty, age 65, service 45 years; Mary Zimmerman, age 65, service 41 years.

363 Exh. 5-jj April 24, 1935 Page 1168

The foregoing Reports Nos. 35095 and J-35101 were on motion of Mr. Buehler approved and adopted by vote on roll call, ten yeas, no nays.

364 Exh. 5-kk May 15, 1935 Page 1318

(35159) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 5 (Rec. 326; Abst. 193) qualifications of each of the 2 persons named for such retirement and effective dates, including Plaintiff Caroline M. Dean, age 68, service 27 years; Intervening Plaintiff Effie Hoerner, age 65, service 45 years.

365 Exh. 5-ll May 15, 1935 Page 1320

The foregoing Report No. 35159 was on motion of Mr. Buehler approved and adopted by vote on

366 (Exh. 5-mm May 15, 1935 Page 1321)

roll call nine yeas, no nays.

368 Mr. Carter: Now I have here, a similar statement prepared by Mr. Bates for these four other years. I would like to make the same sort of an offer. The volumes are all here and it is a case of working back year by year as to each of these. It seems to me that counsel ought not to object.

Mr. Righeimer: I have no objections to his witness stating that he has made an examination and in that examination on certain pages of the proceedings, or certain dates, that there were certain actions taken in reference to it and that these things speak for themselves.

Mr. Carter: And that they may be offered in evidence?

Mr. Righeimer: And that they may be offered and received.

Mr. Carter: That photostats of them?

Mr. Righeimer: May be received in evidence, subject to my objection that it is immaterial.

The Court: That they are immaterial, yes.

Mr. Righeimer: And it is not proper for the purpose of establishing a custom.

The Court: Yes.

The Witness: I have checked over from 1930. The first volume is July, 1930.

The Court: Is it necessary, as there is no objection to it, to have him read all these things?

Mr. Carter: Not if it is understood that they admit it in evidence subject to their check. We will give them a list of them.

Mr. Righeimer: Subject to our objection.

The Court: Subject to their objection that they are immaterial. Not as to the form of the proof or the form of the offer—is that right?

369 Mr. Righeimer: That is true.

Mr. Carter: It is considered that they are in. We will ask to substitute photostats as to these others because they are bound volumes and we will have to return them. That will be understood.

Mr. Righeimer: Yes.

(The documents referred to were received in evidence and are as follows:)

370-409 Plaintiffs' Exh. 1 to and including Exh. 1-ll.

(Photostatic copies of pages of printed proceedings of Board of Education.)

370 Plaintiffs' Exh. 1 July 9, 1930 Page 8
(27217) Voluntary Retirement of Teachers.

The Superintendent of Schools recommends that in accordance with their written requests the following members of the teaching force be retired from active service, pursuant to the provisions of the Teachers' Retirement Law, effective on the dates

specified: There then follow the names of six persons with information as to each showing whether teacher, principal or assistant principal, name of school, effective date of retirement, date of birth, period of service in Chicago public schools, with month and year when such service commenced and terminated and number of years, and if not continuous, month and year when service recommenced and again terminated, and in such case, number of years of such service during last twenty years; and if Chicago service less than twenty-five years, period of service in public schools of the United States outside of Chicago. Said six so named include Intervening Plaintiffs Alma Beach, age 68, service Chicago 23 years, outside 15 years; May E. Curtiss, age 65, Chicago service 43 years; Luman Hewes, age 66, service 40 years; Nellie L. Linsley, age 65, service Chicago 17 years 1 month, outside 10 years 5 months, last twenty-year period 17 years 1 month Chicago service; Adeline S. A. Schaefer, age 65, Chicago service 45 years; Stella B. Vincent, age 68, service Chicago 15 years 9 months, outside 16 years;

371 Exh. 1-a July 9, 1930 page 20

The foregoing report No. 27217 was on motion of Mrs. Hefferan approved and adopted by vote on roll call, ten yeas, no nays.

372 Exh. 1-b July 23, 1930 page 79

(27338) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications for such retirement

and effective date of six persons named, including Intervening Plaintiffs Katharine C. Baker, age 65, service 35 years; Jessie E. Blodgett, age 66, service 45 years;

373 (Exh. 1-c . July 23, 1930 page 80)

Barbara C. Leu, age 67, service 34 years; Julia T. Murphy, age 66, service 47 years; Mary E. Sullivan, age 65, service 43 years, for last twenty-year period 19 years 5 months.

374 Exh. 1-d July 23, 1930 page 86

The foregoing Report No. 27338 was on motion of Mrs. Hefferan approved and adopted by vote on roll call, ten yeas, no nays.

375 Exh. 1-e August 5, 1930 page 141

(27530) Voluntary Retirement of Teachers.

Recommendation of Superintendent in same language and giving in same form as in Exhibit 1 (Rec. 370; Abst. 206) qualifications of each of three persons named for such retirement and effective dates, including Intervening Plaintiffs Catherine G. Ford, age 67, service 44 years and during last twenty years, 19 years 9 months; Cecelia M. Gavin, age 65, service 47 years; Anna Taylor Northway, age 65, service 31 years.

376 Exh. 1-f August 5, 1930 page 142

The foregoing Report No. 27530 was on motion of Mrs. Hefferan approved and adopted by vote on roll call, eight yeas, no nays.

377 Exh. 1-g August 29, 1930 page 230

(M-27589) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of nine persons named for such retirement and effective dates, including Intervening Plaintiffs Louise Alvord, age 67, service 41 years; Josephine S. Hersperger, age 66, service 31 years; Alice L. Hogan, age 65, service 37 years; Fred G. Holmes, age 65, service 25 years, Nellie E. Larkin, age 65, service 44 years; Emma M. Letz, age 69, service 50 years; Gertrude D. Schilling, age 66, service 46 years.

The foregoing Report No. M-27589 was on motion of Mr. English approved and adopted by vote on roll call, seven yeas, no nays.

378 Exh. 1-h September 10, 1930 page 292

(27741) Retirement of Teachers—Voluntary

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of two persons named for such retirement and effective dates, including Intervening Plaintiff Alice M. Dummer, age 65, Chicago service 39 years.

(27742) Voluntary Retirement of Teachers.

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of three persons named for such retirement and effective dates,

including Intervening Plaintiffs Elinor K. Boothroyd, age 66, Chicago service 39 years, for last twenty year period, 19 years 8 months;

379 (Exh. 1-i September 10, 1930 page 293)

Ida M. Peaslee, age 65, service 44 years; Elizabeth E. Walde, age 69, service 42 years.

380 Exh. 1-j September 10, 1930 page 300

The foregoing Reports Nos. 27741 and 27742 were on motion of Mrs. Hefferan approved and adopted by vote on roll call, eight yeas, no nays.

381 Exh. 1-k September 24, 1930 page 391

(27955) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of two persons named for such retirement and effective dates, including Intervening Plaintiffs Viola M. Shaw, age 65, service 25 years 9 months; Grace Townsend Smith, age 65, service 45 years.

(27956) Voluntary Retirement of Teacher

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications for such retirement and effective date as to Intervening Plaintiff Elizabeth W. Murphy, age 65, service 45 years.

382 Exh. 1-l September 24, 1930 page 401

The foregoing Reports Nos. 27955 and 27956 were on motion of Mr. English approved and adopted by vote on roll call, eight yeas, no nays.

383 Exh. 1-m October 8, 1930 page 453

(28099) Voluntary Retirement of Teachers.

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of five persons named for such retirement and effective dates, including Intervening Plaintiffs Emma A. W. Allen, age 66, service Chicago 23 years, outside 16 years;

384 (Plaintiffs' Exh. 1-n October 8, 1930 page 454)

Elizabeth M. Connolly, age 67, Chicago service 35 years; Jennie E. Slack, age 65, service 45 years; Jennie L. Snyder (now married and an Intervening Plaintiff under the name of Jennie L. McBride), age 65, service 29 years.

(28100) Retirement of Teachers—Correction of Date.

Superintendent recommends that Report No. 24588 adopted July 10, 1929, be amended so that date of retirement of the five persons named in this report, including Intervening Plaintiffs Minnie T. Alexander, Mary A. Hotchkin and Mirabelle S. Stodder, shall become effective as of close of school year (June 28, 1929) instead of September 2, 1929.

Written applications for voluntary retirement under Teachers' Retirement Law were filed by them, date of application and date designated for retirement being as follows:

Name	Date of Application	Date Requested for Retirement
Minnie T. Alexander	June 28, 1929	June 28, 1929
Ada R. Farr	June 18, 1929	June 29, 1929
Anne Garden	June 28, 1929	June 30, 1929
Mary A. Hotchkin	June 1, 1929	June 30, 1929
Mirabelle S. Stodder	June 12, 1929	June 28, 1929

Following the usual custom, recommendation to Board provided for retirement as of date on which annuity would begin, September 2, 1929, first day of new school year. However, an amendment to the Retirement Law which went into force and effect on July 1, 1929 reduced the maximum annuity for voluntary retirement from $1500.00 to $1400.00 for all persons retiring after first day of July, 1929. This change in the law was not generally known and the Superintendent was not advised of it until about the first of October, 1929. He believes that inasmuch as the teachers above named actually filed their applications for retirement prior to, and asked to be retired at the close of the school year, their requests should be granted and that they should be retired under the provisions of the Law as it existed prior to July 1, 1929. The Attorney of the Board states that there is no legal reason why this correction may not be made.

385 Exh. 1-o October 8, 1930 page 459

The foregoing Reports Nos. 28099 and 28100 were on motion of Mr. English approved and adopted by vote on roll call, ten yeas, no nays.

386, Exh. 1-p October 22, 1930 Page 520

(28244) Voluntary Retirement of Teacher

Recommendation of Superintendent in same language and giving in the same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications for such retirement and effective date as to the person therein named.

387 Exh. 1-q October 22, 1930 page 523

The foregoing Report No. 28244 was on motion of Mr. English approved and adopted by vote on roll call, ten yeas, no nays.

388 Exh. 1-r November 12, 1930 page 558

(28380) Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the three perpersons named for voluntary retirement and effectives dates, including Intervening Plaintiffs Chattie E. Field, age 65, service 36 years; Mary L. Russell, age 69, service 30 years; Agnes G. Troschel, age 69, service 42 years.

390 Exh. 1-s November 12, 1930 page 574

The foregoing Report No. 28380 was on motion of Mr. English approved and adopted by vote on roll call, eight yeas, no nays.

391 Exh. 1-t December 10, 1930 Page 711

(28697) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 3 persons named for such retirement and effective dates, including Intervening Plaintiffs Jane B. Baldwin, age 65, Chicago service 19 years, outside 22 years; Rose A. Farley, age 65, Chicago service 43 years; Nellie E. Green (joined as Intervening Plaintiff herein under her present name of Nellie Green Long,) age 67, service 47 years.

392 Exh. 1-u December 10, 1930 Page 713

The foregoing Report No. 28697 was on motion of Mr. English approved and adopted by vote on roll call, ten yeas, no nays.

393 Exh. 1-v December 26, 1930 Page 795

(28833) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 6 persons named for such retirement and effective dates, including Intervening Plaintiffs Millicent B. Bingham, age 68, Chicago service 15 years 8½ months, outside 12 years; Mary A. Fox, age 65, Chicago service 42 years; Fanny A. Royall, age 66, service 46 years; Dixie Lee Bryant, age 69, Chicago service 22 years, outside 13 years.

394 Exh. 1-w December 26, 1930 Page 797

The foregoing Report No. 28833 was on motion of Mrs. Hefferan approved and adopted by vote on roll call, eight yeas, no nays.

395 Exh. 1-x January 14, 1931 Page 829

(28935) Voluntary Retirement of Teacher

Recommendation of Superintendent in same language and giving in same from as in Exh. 1 (Rec. 370; Abst. 206) qualifications for such retirement and effective date as to Intervening Plaintiff Sarah Eva Kendall, age 68, service 25 years.

(28936) Retirement of Teachers—Voluntary

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 4 persons named for such retirement and effective dates, including Intervening Plaintiffs Henrietta A. Crowley, age 65, service 45 years; Ada Jewell, age 67, service 30 years.

396 Exh. 1-y January 14, 1931 Page 833

The foregoing Reports Nos. 28935 and 28936 were on motion of Mrs. Hefferan approved and adopted by vote on roll call, eight yeas, no nays.

397 Exh. 1-z January 28, 1931 Page 1313

(29019) Retirement of Teachers—Voluntary

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of the 3 persons named

for such retirement and effective dates, including Intervening Plaintiff Kate Keith, age 66, service 44 years.

398 Exh. 1-aa January 28, 1931 Page 1315

The foregoing Report No. 29019 was on motion of Mrs. Hefferan approved and adopted by vote on roll call, nine yeas, no nays.

399 Exh. 1-bb February 11, 1931 Page 1345

(29118) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 6 persons named for such retirement and effective date, including Intervening Plaintiffs Mary E. Babcock, age 66, service 32 years; J. Katharine Cutler, age 67, service 46 years; Hilda C. Johnson, age 65, service 42 years; Minnie C. Olson, age 68, service 39 years, for last 20 years, 16 years; Anna V. Pettit, age 69, service 36 years; Catherine E. M. Virts, age 65, service 29 years, for last 20 years, 18 years, 1 month.

400 Exh. 1-cc February 11, 1931 Page 1347

The foregoing Report No. 29118 was on motion of Mrs. Hefferan approved and adopted by vote on roll call, eight yeas, no nays.

401 Exh. 1-dd March 11, 1931 Page 1438

(29312) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec.

370; Abst. 206) qualifications of each of the 3 persons named for such retirement and effective dates, including Intervening Plaintiff Lizzie V. Borthwick, age 65, service 43 years; Sarah M. Campbell, age 65, service 32 years;

402 (Exh. 1-ee March 11, 1931 Page 1439)

Harriet W. Winter, age 66, service 46 years.

403 Exh. 1-ff March 11, 1931 Page 1440

The foregoing Report No. 29312 was on motion of Mr. English approved and adopted by vote on roll call, eight yeas, no nays.

404 Exh. 1-gg April 8, 1931 Page 1518

(29485) Voluntary Retirement of Teacher

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) her qualifications for such retirement and effective date as to Intervening Plaintiff Nellie M. Cochran, age 66, service 37 years.

405 Exh. 1-hh April 8, 1931 Page 1529

The foregoing No. 29485 was on motion of Mr. English approved and adopted by vote on roll call, eleven yeas, no nays.

406 Exh. 1-ii April 22, 1931 Page 1568

(29603) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec.

370; Abst. 206) qualifications of each of the 2 persons named for such retirement and effective dates, including Intervening Plaintiffs Edith B. Flagler, age 66, service 35 years, during last 20 years, 15 years 5 months; Helena D. Harper, age 65, service 32 years.

407 Exh. 1-jj April 22, 1931 Page 1570

The foregoing Report No. 29603 was on motion of Mr. English approved and adopted by vote on roll call, eleven yeas, no nays.

408 Exh. 1-kk May 13, 1931 Page 1720

(29714) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 3 persons named for such retirement and effective date, including Intervening Plaintiff Mary T. Flynn, age 68, service 43 years.

409 Exh. 1-ll May 13, 1931 Page 1722

The foregoing Report No. 29714 was on motion of Mr. English approved and adopted by vote on roll call, ten yeas, no nays.

410-443 Plaintiffs' Exh. 2 to and including Exh. 2-gg.

(Photostatic copies of pages of printed proceedings of Board of Education.)

Plaintiffs' Exh. 2 July 8, 1931 Page 7

(30110) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exhibit 1 (Rec. 370; Abst. 206) qualifications of each of the 8 persons named for such retirement and effective dates, including Intervening Plaintiffs Minnie A. Dietz, age 67, service 44 years; Minnie E. Donoghue, age 69, service 53 years; Mary E. Gearen (made an Intervening Plaintiff under her present name of Mary E. Tosney), age 66, Chicago service 16 years 1 month, outside 22 years; Clara Putzki, age 65, Chicago service 42 years, during last 20 years 18 years; Emma M. Westerfield, age 66, service 45 years; Clara L. Wightman, age 66, service 41 years; Emma E. Ohde, age 67, service 43 years.

411 Exh. 2-a July 8, 1931 Page 14

The foregoing Report No. 30110 was on motion of Mr. English approved and adopted by vote on roll call, eleven yeas, no nays.

412 Exh. 2-b August 26, 1931 Page 168

(30306) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 4 persons named for such retirement and effective dates, including Intervening Plaintiffs Thomas H. Furlong, age 69, service 31 years; Ida Jaeger, age 67, service 41 years; Effie M. Smith, age 67, service 38 years; Harriet H. Smith, age 65, service 31 years.

413 Exh. 2-c August 26, 1931 Page 182

The foregoing Report No. 30306 was on motion of Mrs. Hefferan approved and adopted by vote on roll call, 7 yeas, no nays.

414 Exh. 2-d September 9, 1931 Page 261

(30439) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 7 persons named for such retirement and effective dates, including Intervening Plaintiffs Blanche D. Abbott, age 65, Chicago service 21 years 9 months, outside 14 years; Jennie B. Caswell, age 68, Chicago service 32 years; Elizabeth A. Farrell, age 65, service 44 years; Margaret W. Kelly, age 67, service 47 years; Marcella Riley, age 65, service 40 years; Sadie M. Cooney, age 65, service 37 years.

415 Exh. 2-e September 9, 1931 Page 263

(G-30442) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of 3 persons named for such retirement and effective dates, including Intervening Plaintiffs Louise H. Kurz, age 65, service 27 years, during last 20 years, 16 years 9 months; Jennie E. Plumbe, age 65, service 31 years 8 months, during last 20 years, 18 years 9 months.

The foregoing Reports Nos. 30439 and G-30442 were on motion of Mr. English approved and adopted by vote on roll call, eight yeas, no nays.

416 Exh. 2-f September 23, 1931 Page 300

(30537) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications for such retirement and effective date as to Intervening Plaintiff Mary A. Chappel, age 65, service 25 years.

418 Exh. 2-g September 23, 1931 Page 305

The foregoing Report No. 30537 was on motion of Mr. English approved and adopted by vote on roll call, eight yeas, no nays.

419 Exh. 2-h October 14, 1931 Page 357

(30664) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exhibit 1 (Rec. 370; Abst. 206) qualifications of each of the 2 persons named for such retirement and effective dates, including Intervening Plaintiff Hattie C. Maxwell, age 67, service 47 years.

420 Exh. 2-i October 14, 1931 Page 363

The foregoing Report No. 30664 was on motion of Mr. English approved and adopted by vote on roll call, nine yeas, no nays.

421 Exh. 2-j October 28, 1931 Page 413

(30785) Voluntary Retirement

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec.

370; Abst. 206) qualifications of each of the 2 persons named for such retirement and effective dates, including Intervening Plaintiffs Mathilde Jaeger, age 69, service 39 years; Cora P. Tennery, age 65, service 37 years, during last 20 years, 16 years.

422 Exh. 2-k October 28, 1931 Page 416

The foregoing Report No. 30785 was on motion of Mr. English approved and adopted by vote on roll call, nine yeas, no nays.

423 Exh. 2-l November 12, 1931 Page 465
(30976) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 3 persons named for such retirement and effective dates, including Intervening Plaintiffs Grace P. Bixel, age 65, service 41 years; Myrtilla M. Mace, age 69, Chicago service 23 years, outside 14 years; Lillian M. Wilson, age 65, service 25 years.

424 Exh. 2-m November 12, 1931 Page 467

The foregoing Report No. 30976 was on motion of Mr. English approved and adopted by vote on roll call, eight yeas, no nays.

425 Exh. 2-n November 25, 1931 Page 533
(31047) Voluntary Retirement of Teacher

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications for such retirement

and effective date as to Intervening Plaintiff Bertha Fontayne, age 69, service 49 years.

426 Exh. 2-o November 25, 1931 Page 537

The foregoing Report No. 31047 was on motion of Mr. English approved and adopted by vote on roll call, eight yeas, no nays.

427 Exh. 2-p December 23, 1931 Page 626

(31242) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 6 persons named for such retirement and effective dates, including Intervening Plaintiffs Amanda Isensee, age 65, service 31 years; Josephine M. McConville, age 69, service 45 years; Elizabeth M. McLean, age 67, Service 47 years; Katherine O'Grady, age 65, service 42 years 5 months, during last 20 years, 17 years 2 months; Effie A. Tinen, age 66, service 46 years.

428 Exh. 2-q December 23, 1931 Page 627

The foregoing Report No. 31242 was on motion of Mrs. Hefferan approved and adopted by vote on roll call, eight yeas, no nays.

428-a Exh. 2-r January 13, 1932 Page 666

(A-31316) Voluntary Retirement of Teacher

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications for such retirement

and effective date as to Intervening Plaintiff Katherine B. Fonvielle, age 68, service 37 years.

The foregoing Report No. A-31316 was on motion of Mr. English approved and adopted by vote on roll call, nine yeas, no nays.

429 Exh. 2-s January 27, 1932 Page 692

(31384) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 7 persons named for such retirement and effective dates, including Intervening Plaintiffs Jennie S. Allison, age 65, service 44 years; Cornelia Beardsley, age 66, service 45 years; Florence G. Daniel, age 65, service 32 years; Jacob H. Hauch, age 66, service 37 years; Jane H. O'Brien, age 68, service 47 years; Harriet B. Rogers, age 65, service 36 years, during last 20 years, 19 years.

430 Exh. 2-t January 27, 1932 Page 696

The foregoing Report No. 31384 was on motion of Mr. English approved and adopted by vote on roll call, nine yeas, no nays.

431 Exh. 2-u February 10, 1932 Page 731

(31453) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 3 persons named for such retirement and effective dates,

including Intervening Plaintiffs Nellie G. Hooker, age 66, service 31 years; Inez M. Oldham, age 65, service 34 years.

432 Exh. 2-v February 10, 1932 Page 732

The foregoing Report No. 31453 was on motion of Mr. English approved and adopted by vote on roll call, eleven yeas, no nays.

433 Exh. 2-w February 24, 1932 Page 787

(31501) Retirement of Teachers—Voluntary

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 296) qualifications of each of the 2 persons named for such retirement and effective dates, including Intervening Plaintiff Sarah E. Gay, age 69, Chicago service 19 years, outside 17 years;

434 (Exh. 2-x February 24, 1932 Page 788)

John A. Peters, age 66, Chicago service 23 years, outside 12 years.

435 Exh. 2-y February 24, 1932 Page 789

The foregoing Report No. 31501 was on motion of Mr. English approved and adopted by vote on roll call, seven yeas, no nays.

436 Exh. 2-z March 23, 1932 Page 1403

(31592) Voluntary Retirement of Teachers.

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec.

370; Abst. 206) qualifications of each of the 2 persons named for such retirement and effective dates, including Intervening Plaintiffs Sue Gallaher, age 68, service 45 years; Katharine E. Mohrmann, age 65, service 45 years.

437 Exh. 2-aa March 23, 1932 Page 1404

The foregoing Report No. 31592 was on motion of Mr. English approved and adopted by vote on roll call, seven yeas, no nays.

438 Exh. 2-bb April 27, 1932 Page 1481

(31695) Voluntary Retirement of Teachers.

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 3 persons named for such retirement and effective dates, including Intervening Plaintiffs Sarah Baynes, age 67, service 44 years; Harriet L. Post, age 65, service 35 years.

439 Exh. 2-cc April 27, 1932 Page 1483

The foregoing Report No. 31695 was on motion of Mr. English approved and adopted by vote on roll call, eight yeas, no nays.

440 Exh. 2-dd May 11, 1932 Page 1508

(31742) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 2 per-

sons named for such retirement and effective dates, including Intervening Plaintiffs Anna M. Cody, age 65, service 38 years; Margaret E. Rich, age 65, service 45 years.

441 Exh. 2-ee May 11, 1932 Page 1509

The foregoing Report No. 31742 was on motion of Mr. English approved and adopted by vote on roll call, nine yeas, no nays.

442 Exh. 2-ff May 25, 1932 Page 1560.

(31771) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in substantially same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 2 persons named for such retirement and effective dates, including Intervening Plaintiff Marion L. Jones, age 65, service 45 years.

443 Exh. 2-gg May 25, 1932 Page 1561

The foregoing Report No. 31771 was on motion of Mr. English approved and adopted by vote on roll call, eleven yeas, no nays.

444-494 Plaintiffs' Exh. 3 to and including Exh. 3-vv

(Photostatic copies of pages of printed proceedings of Board of Education.)

444 Exh. 3 August 1, 1932 Page 62

(31939) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec.

370; Abst. 206) qualifications of each of the 11 persons named for such retirement and effective dates, including Intervening Plaintiffs Ella E. Earle, age 65, service 44 years; Angela M. Gerrity, age 67, service 36 years, during last 20 years, 19 years; Annie E. Goodyear, age 65, service 43 years; Caroline Hammerschmidt, age 69, service 40 years; Louise Joyce, age 65, service 38 years; Harriet C. Lapham, age 65, service 39 years; Emma L. Lee, age 65 years, service 25 years, 5 months; Elizabeth M. Manix, age 65, service 43 years; Ella M. Ottaway, age 65, service 37 years; Mary E. Twohig, age 69, service 50 years.

445 Exh. 3-a August 1, 1932 Page 67

The foregoing Report No. 31939 was on motion of Mr. English approved and adopted by vote on roll call, eight yeas, no nays.

446 Exh. 3-b August 10, 1932 Page 96

(31977) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 4 persons named for such retirement and effective date, including Intervening Plaintiffs

447 (Exh. 3-c August 10, 1932 Page 97)

Rose A. Beatty, age 65, service 41 years; Annie E. Dillon, age 68, service 46 years; Sarah Letitia Greene, age 67, service 36 years; Ada R. Thompson, age 69, service 39 years.

The foregoing Report No. 31977 was on motion of Mrs. Hefferan approved and adopted by vote on roll call, six yeas, no nays.

448 Exh. 3-d September 7, 1932 Page 225

(32088) Voluntary Retirement of Teachers.

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 11 persons named for such retirement and effective dates, including Intervening Plaintiffs Carrie E. Armstrong, age 65, service 43 years; Martha J. Adams, age 67, service 45 years; M. Joyce Adams, age 69, service 28 years; Stella R. Cottrell, age 65, service 42 years; Katherine M. Keating, age 65, service 38 years; Agnes W. Keith, age 69, service 41 years; Evelyn M. Loucks, age 65, service 45 years; Minnie C. Reuter, age 66, service 44 years; Sellie H. Toole, age 65, service 48 years; Edith E. Snyder, age 65, service 29 years.

The foregoing Report No. 32088 was on motion of Mrs. Hefferan approved and adopted by vote on roll call, six yeas, no nays.

450 Exh. 3-e September 14, 1932 Page 244

(32103) Voluntary Retirement of Teachers.

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of the 3 persons named for such retirement and effective date, including Intervening Plaintiffs Bridget M. Dalton,

age 65, service 36 years; Mary F Gould (made an Intervening Plaintiff herein under her present name of Mary G. Pennington) age 67, service 48 years.

451 Exh. 3-f September 14, 1932 Page 245

The foregoing Report No. 32103 was on motion of Mrs. Hefferan approved and adopted by vote on roll call, eight yeas, no nays.

452 Exh. 3-g September 28, 1932 Page 273

(32147) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications for each of the 2 persons named for such retirement and effective date, including Intervening Plaintiff Mary T. Adams, age 69, service 51 years.

453 Exh. 3-h September 28, 1932 Page 278

The foregoing Report No. 32147 was on motion of Mrs. Hefferan

454 (Exh. 3-i September 28, 1932 Page 279) approved and adopted by vote on roll call, seven yeas, no nays.

455 Exh. 3-j October 13, 1932 Page 291

(32183) Voluntary Retirement of Teacher

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications for retirement and effective date as to Intervening Plaintiff Marie L. Mann, age 65, service 47 years.

(32184) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of the 3 persons named for such retirement and effective dates, including Intervening Plaintiffs Elizabeth A. Keating, age 67, service 49 years; Emma B. Scudder, age 65, service 25 years; George Jackson Wagner, age 65, service 43 years.

456 Exh. 3-k October 13, 1932 Page 298

The foregoing Reports Nos. 32183 and 32184 were on motion of Mr. English approved and adopted by vote on roll call, seven yeas, no nays.

457 Exh. 3-l October 26, 1932 Page 323

(32231) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of the 4 persons named for such retirement and effective dates, including Intervening Plaintiffs Elizabeth C. Fife, age 68, service 25 years, 9 months, during last 20 years, 18 years 7 months; C. Bertha Holt, age 68, service 25 years 9 months; Elizabeth McKillop, age 67, service 43 years; Maud Secrest, age 67, Chicago service 24 years 1 month, outside 17 years.

458 Exh. 3-m October 26, 1932 Page 325

The foregoing Report No. 32231 was on motion

459 (Exh. 3-n October 26, 1932 Page 326)

of Mr. Hemingway approved and adopted by vote on roll call, six yeas, no nays.

460 Exh. 3-o November 9, 1932 Page 342

(32264) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of the 9 persons named for such retirement and effective dates, including Intervening Plaintiffs Ida M. Brown, age 67, service 34 years; Annie S. Gauch, age 68, service 45 years; Nellie C. Goodnow, age 67, service 47 years; Anna J. Kerrigan, age 69, service 50 years; Margaret Mahony, age 69, service 46 years; Margaret Powell, age 69, service 36 years; Mary C. Scribner, age 68, service 33 years; Anna Straus, age 67, service 46 years; Margaret C. Young, age 65, service 37 years.

461 Exh. 3-p November 9, 1932 Page 344

The foregoing Report No. 32264 was on motion of Mr. English approved and adopted by vote on roll call, eight yeas, no nays.

462 Exh. 3-q November 23, 1932 Page 379

(32312) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications for her retirement and effective date as to Intervening Plaintiff Erin C. Miller, age 67, service 43 years.

463 Exh. 3-r November 23, 1932 Page 380

The foregoing Report No. 32312 was on motion of

464 (Exh. 3-s November 23, 1932 Page 381)

Mrs. Hefferan approved and adopted by vote on roll call, six yeas, no nays.

465 Exh. 3-t December 14, 1932 Page 421

(32384) Voluntary Retirement of Teacher

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) her qualifications for retirement and effective date of the person therein named.

(32385) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of the 15 persons named for such retirement and effective dates, including Intervening Plaintiff Clara Belle Allen, age 68, service 40 years; Plaintiff Nellie C. Callahan, age 65, service 45 years; Intervening Plaintiffs Katharine M. Egan, age 66, service 42 years; Katherine Flaherty, age 68, service 36 years; Ellen W. Hansen, age 65, service 42 years; Walter J. Harrower, age 69, service 45 years;

466 (Exh. 3-u December 14, 1932 Page 422)

Sue B. Keller, age 65, service 41 years; Annie O'Brien, age 65, service 45 years; Jennie P. Sorenson, age 69, service 40 years; Gertrude M. Van Liew,

age 65, service 40 years; Effie E. Watson, age 65, service 36 years; Katherine E. Adams, age 69, service 49 years; Leonora R. Wilson, age 66, service 46 years; Lelia Purdy, age 68, Chicago service 18 years 9 months, outside 18 years.

467 Exh. 3-v December 14, 1932 Page 423

The foregoing Reports Nos. 32384 and 32385 were on motion of Mr. English approved and adopted by vote on roll call, nine yeas, no nays.

468 Exh. 3-w December 28, 1932 Page 459

(32458) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 7 persons named for retirement and effective dates, including Intervening Plaintiffs Anna C. Bachman, age 65, service 36 years; Ella Cusick, age 68, Chicago service 17 years 8 months, outside 25 years; Minnie Euphrat, age 66, Chicago service 42 years; Antonia Lakay, age 68, service 48 years; Zaidee E. Mitchell, age 65, service 45 years; Mary F. Willard, age 65, service 39 years, during last 20 years, 16 years 9 months; Esther Meyer, age 65, service 47 years.

469 Exh. 3-x December 28, 1932 Page 463

The foregoing Report No. 32458 was on motion of

470 (Exh. 3-y December 28, 1932 Page 464)

Mr. English approved and adopted by vote on roll call, seven yeas, no nays.

471 Exh. 3-z ◇ January 13, 1933 Page 500

(B-32509) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 9 persons named for such retirement and effective dates, including Intervening Plaintiffs Mary G. Hudson, age 65, service 44 years; Ernestine L. Kircher, age 65, service 34 years; Malinda Mann, age 69, service, Chicago 24 years, outside 18 years; Harriet Ostrom, age 66, Chicago service 17 years 4 months, outside 17 years; Mabel E. Smallwood, age 66, Chicago service 44 years; Mary Solberg, age 65, service 40 years; Ida Josephine Stewart, age 67, service 38 years; Agnes M. Watson, age 68, service 49 years; Anna Albertine Wetter, age 69, service 44 years.

472 Exh. 3-aa January 13, 1933 Page 501

(F-32509) Voluntary Retirement of Teacher

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206), the qualifications for such retirement and effective date of the person named therein.

The foregoing Reports Nos. B-32509 and F-32509 were on motion of Mr. English approved and adopted by vote on roll call, six yeas, no nays.

473 Exh. 3-bb January 25, 1933 Page 520

(32536) Voluntary Retirement of Teacher

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications for such retirement and effective date of the person named therein.

(32538) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 7 persons named for such retirement and effective dates, including Intervening Plaintiffs Clara M. Brown, age 69, service 49 years; Grace Church, age 67, service 46 years; Nellie J. Cook, age 66, Chicago service 23 years 4 months, outside 2 years; Mary Meythaler, age 66, Chicago service 34 years; Z. Anna Novotny, age 66, service 46 years; May E. Ryan, age 65, service 43 years.

474 Exh. 3-cc January 25, 1933 Page 522

The foregoing Reports Nos. 32536 and 32538 were on motion of Mr. Hemingway approved and adopted by vote on roll call, seven yeas, no nays.

475 Exh. 3-dd February 8, 1933 Page 967

(32603) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 3 persons named for such retirement and effective dates, including Intervening Plaintiffs Mary A. Kenney, age 65, service 45 years; Margaret Huleatt, age 66, service 45 years.

The foregoing Report No. 32603 was on motion of Mr. English approved and adopted by vote on roll call, six yeas, no nays.

476 Exh. 3-ee February 23, 1933 Page 1000

(32635) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of the 2 persons named for such retirement and effective dates, including Intervening Plaintiffs Margaret E. Reed, age 65, Chicago service 24 years, outside 9 years; Elizabeth Estella Sanborn, age 65, Chicago service 36 years.

477 Exh. 3-ff February 23, 1933 Page 1003

(D-32636) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications for retirement and effective date of the person named therein.

The foregoing Reports Nos. 32635 and D-32636 were on motion of Mr. English approved and adopted by vote on roll call, eight yeas, no nays.

478 Exh. 3-gg March 13, 1933 Page 1042

(32663) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 4 persons named for retirement and effective dates, including Intervening Plaintiffs Nettie M. Barry, age 65, service 42 years; Eleanor L. Hally, age 70, service 45 years; Margaret H. Mitsch, age 66, service 44 years; Arthur L. Penhallow, age 69, service 37 years.

479 Exh. 3-hh March 13, 1933 Page 1045

The foregoing Report No. 32663 was on motion of Mr. English approved and adopted by vote on roll call, seven yeas, no nays.

480 Exh. 3-ii March 22, 1933 Page 1059

(32809) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of the 3 persons named for such retirement and effective dates, including Intervening Plaintiffs Louise A. Lyman, age 65, service 37 years; Helen B. Eastman, age 65, service 45 years; Catherine C. McLean, age 66, service 27 years.

481 Exh. 3-jj March 22, 1933 Page 1060

The foregoing Report No. 32682 was on motion of Mr. Caldwell approved and adopted by vote on roll call, eight yeas, no nays.

483 Exh. 3-kk April 12, 1933 Page 1208

(32717) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 3 persons named for such retirement and effective dates, including Intervening Plaintiffs Elizabeth D. Fox, age 65, service 32 years; Doris F. Kahn, age 65, service 39 years; Rachael A. Ringland, age 65, service 43 years.

484 Exh. 3-ll April 12, 1933 Page 1212

The foregoing Report No. 32717 was on motion of Mr. English approved and adopted by vote on roll call, nine yeas, no nays.

485 Exh. 3-mm April 26, 1933 Page 1263

(32783). Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 6 persons named for such retirement and effective dates, including Intervening Plaintiffs Byrnina B. Beardsley, age 65, service 33 years; Janie P. Deming, age 69, Chicago service 20 years, outside 26 years; Therese T. Dillon, age 67, Chicago service 39 years, during last 20 years, 17 years; Ada C. Dyson, age 67, service 27 years; Augusta Wines, age 65, service 33 years.

486 Exh. 3-nn April 26, 1933 Page 1264

The foregoing Report No. 32783 was on motion of Mr. English approved and adopted by vote on roll call, nine yeas, no nays.

487 Exh. 3-oo May 10, 1933 Page 1284

(32809) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 4 persons named for such retirement and effective dates, including Intervening Plaintiffs Auguste J. Forster,

age 68, service 49 years; Charles E. Linebarger, age 66, service 40 years; Mary Norton, age 65, service 26 years; Sarah G. Street, age 67, Chicago service 24 years 7 months, outside 6 years.

488 Exh. 3-pp May 10, 1933 Page 1285

The foregoing Report No. 32809 was on motion of Mr. English approved and adopted by vote on roll call, nine yeas, no nays.

489 Exh. 3-qq May 24, 1933 Page 1327

(32846) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of the 2 persons named for retirement and effective dates, including Intervening Plaintiffs Annie E. Daley, age 65, service 45 years; Berkeley J. Thomas, age 67, Chicago service 19 years 3 months, outside 7 years 5 months.

490 Exh. 3-rr May 24, 1933 Page 1328

The foregoing Report No. 32846 was on motion of

491 (Exh. 3-ss May 24, 1933 Page 1329)

Mrs. Hefferan approved and adopted by vote on roll call, eleven yeas, no nays.

492 Exh. 3-tt June 14, 1933 Page 1361

(32891) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec.

370; Abst. 206) qualifications of each of the 5 persons named for such retirement and effective dates, including Intervening Plaintiffs Anna M. Andrus, age 68, service 32 years; Emma B. Campbell, age 65, service 32 years; Martha H. Dwyer, age 69, service 31 years; Elise Mendius, age 69, service 34 years; Kate Ward, age 69, service 38 years.

493 Exh. 3-uu June 14, 1933 Page 1363

The foregoing Report No. 32891 was on motion of Mrs. Hefferan approved and adopted by vote on roll call, eight yeas, no nays.

494 Exh. 3-vv June 28, 1933 Page 1394

(32943) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 9 persons named for such retirement and effective dates, including Intervening Plaintiffs Sarah McGill, age 65, service 37 years, during last 20 years 15 years 2 months; Dora Bell Neal, age 65, service 27 years; Evangeline V. Olson, age 65, service 25 years 3 months; Lena N. Olson, age 67, service 38 years; Florence M. Porter, age 65, service 27 years; Ferdinand J. Zipf, age 65, service 27 years.

The foregoing Report No. 32943 was on motion of Mrs. Hefferan approved and adopted by vote on roll call, ten yeas, no nays.

495-540 Plaintiffs' Exh. 4 to and including Exh. 4-rr.

(Photostatic copies of pages of printed proceedings of Board of Education.)

495 Exh. 4 August 9, 1933 Page 36

(33012) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Plaintiffs' Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 10 persons named for such retirement and effective dates, including Intervening Plaintiffs Edith M. Brogan, age 69, service 28 years; Mary E. Buckley, age 66, service 40 years; Elizabeth W. Deadman, age 65, service 39 years; Plaintiff Lillian F. Dougherty, age 68, service 44 years; Intervening Plaintiffs Minnie E. Gray, age 69, service 44 years; Lila M. Hopkins, age 65, service 37 years; Carrie A. Hughes, age 69, service 33 years; Lillian E. Kurtz, age 65, Chicago service 23 years, outside 16 years; Minda F. Letterman, age 66, Chicago service 45 years; James W. Parris, age 65, service 27 years.

496 Exh. 4-a August 9, 1933 Page 38

(B-33017) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 8 persons named for such retirement and effective dates, including Intervening Plaintiffs Eugenie F. Guth, age 68, service 49 years; Sarah A. Hennen, age 69, service 30 years; Winford D'A Keary, age 68, service 46 years; Mary I. McKeown, age 65, service 42 years;

497 (Exh. 4-b August 9, 1933 Page 39)

Allen M. Otwell, age 65, Chicago service 21 years 3 months, outside 13 years; Mary T. Schaefer, age 65, Chicago service 43 years; Plaintiff Laura Tierney, age 67, service 49 years.

The foregoing Reports Nos. 33012 and B-33017 were on motion of Mrs. Hefferan approved and adopted by vote on roll call, eight yeas, no nays.

498 Exh. 4-c August 23, 1933 Page 116

(33056) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 3 persons named for such retirement and effective dates, including Intervening Plaintiffs Alice L. Burns, age 68, service 47 years; Fannie T. Farrell, age 69, service 49 years; Plaintiff Nellie Tarpy Woulfe, age 65, service 33 years.

(33057) Voluntary Retirement of Teacher

Recommendation of Superintendent that in accordance with her written request, voluntary retirement of Mary I. McKeown voted to her in Report No. B-33017 (Rec. 496; Abst. 242) be rescinded.

The foregoing Reports Nos. 33056 and 33057 were on motion of Mr. Buehler approved and adopted by vote on roll call, ten yeas, no nays.

499 Exh. 4-d September 13, 1933 Page 149

(33104) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 18 persons named for such retirement and effective date, including Intervening Plaintiffs Miriam E. Bicknell, age 68, service 25 years; Edith H. Deal, age 66, service 47 years; E. Blanche Dickinson, age 65, service 37 years; Jennie M. Dignum, age 68, service 37 years; Helen V. Gibson, age 65, service 27 years; Harriet W. Grace, age 67, service 37 years; Alice Grove, age 65, service 33 years; Louise J. Klenze, age 65, service 26 years; Eliza M. Newman, age 65, service 35 years, during last 20 years, 19 years; Jane Black Okeson, age 69, service 50 years; Rebecca Okeson, age 65, service 36 years; Helen K. Phelps, age 69, service 34 years, during last 20 years, 19 years; Fannie S. Roberts, age 65, service 34 years, during last 20 years, 19 years; Julia R. Tolman, age 67, service 44 years, during last 20 years, 19 years; Jennie C. Towns, age 66, service 34 years; Ella M. Wallace, age 65, service 38 years; Jesse N. Westbrook, age 66, service 32 years.

500 Exh. 4-e September 13, 1933 Page 150

(A-33106) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 4 persons named for such retirement and effective date, including Intervening Plaintiffs Nettie A. Chad-

wick, age 65, service 33 years; Mary R. Cleveland, age 66, service 35 years; Mary Jones, age 69, service 30 years.

501 Exh. 4-f September 13, 1933 Page 168

The foregoing Reports Nos. 33104 and A-33106 were on motion of Mr. Savage approved and adopted by vote on roll call, ten yeas, no nays.

502 Exh. 4-g September 27, 1933 Page 184

(33126) (33127) (33128) Each headed Voluntary Retirement of Teachers.

Each containing recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of the 3 persons named for such retirement and effective dates in 33126, and of the 1 person named in each of Nos. 33127 and 33128, including Intervening Plaintiffs (33126) Mary E. Smith, age 65, service 27 years; Margaret M. Benson, age 65, service 29 years; also recommending that retirement of Intervening Plaintiff Jennie M. Dignum authorized by Report No. 33104 (Rec. 499; Abst. 244) be fixed at September 25, 1933 (on which she was retired at age 69) whereas at date of her retirement as provided in Report No. 33104 she would have been only 68; (33127) C. Lillian Greenleaf, age 70, service 30 years; (33128) Florence Healy, age 68, service 36 years.

503 Exh. 4-h September 27, 1933 Page 199

The foregoing Reports Nos. 33126, 33127 and 33128 were on motion of Mrs. Hefferan approved and adopted by vote on roll call, ten yeas, no nays.

504 Exh. 4-i October 11, 1933 Page 256

(33158) Retirement Report

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 6 persons named for voluntary retirement and effective dates, including Intervening Plaintiffs Sarah E. Ausemus, age 67, Chicago service 20 years, outside 12 years; Mary L. Burke, age 67, Chicago service 48 years;

505 (Exh. 4-j October 11, 1933 Page 257)

Lillian Farnam, age 69, service 36 years; Lillian K. Foley, age 65, service 30 years, during last 20 years, 19 years 6 months; William J. Goggin, age 67, service 39 years; Mary A. Hyands, age 67, service 27 years.

506 Exh. 4-k October 11, 1933 Page 258

The foregoing Report No. 33158 was on motion of Mr. Walker approved and adopted by vote on roll call, nine yeas, no nays.

507 Exh. 4-l October 25, 1933 Page 275

(33184) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 4 persons named for retirement and effective dates, including Intervening Plaintiffs Charlotte Dutton, age

67, Chicago service 24 years 8 months, outside 14 years; Howard Howland, age 68, Chicago service 34 years; Helen M. Rathbun, age 67, service 43 years.

508 Exh. 4-m October 25, 1933 Page 277

The foregoing Report No. 33184 was on motion of Mr. Walker approved and adopted by vote on roll call, nine yeas, no nays.

509 Exh. 4-n November 8, 1933 Page 295

(33219) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of the 2 persons named for such retirement and effective dates, including Intervening Plaintiffs Minnie M. Batterton, age 65, service 27 years; Joanna Stack, age 65, service 43 years.

510 Exh. 4-o November 8, 1933 Page 296

The foregoing No. 33219 was on motion of Mr. Buehler approved and adopted by vote on roll call,

511 (Exh. 4-p November 8, 1933 Page 297)

eight yeas, no nays.

512 Exh. 4-q November 22, 1933 Page 313

(33275) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec.

370; Abst. 206) qualifications of each of the 6 persons named for such retirement and effective dates, including Intervening Plaintiffs Elizabeth M. Goodbody, age 65 service 37 years; Mary F. Flynn, age 65, service 43 years;

513 (Exh. 4-r November 22, 1933 Page 314)

Mary I. McKeown, age 65, service 42 years; Anna M. Stockbridge, age 69, Chicago service 24 years, outside 19 years; Josephine H. Erzinger, age 65, service 29 years, 4 months, during last 20 years, 16 years.

514 Exh. 4-s November 22, 1933 Page 316

The foregoing Report No. 33275 was on motion of Mr. Buehler approved and adopted by vote on roll call, nine yeas, no nays.

515 Exh. 4-t December 13, 1933 Page 349

(33325) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in

516 (Exh. 4-u December 13, 1933 Page 350)

Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 15 persons named for such retirement and effective dates, including intervening Plaintiffs Margaret Baker, age 70, Chicago service 21 years, outside 14 years; Susan M. Beaman, age 68, Chicago service 37 years; Robert J. Burger, age 65, service 35 years; Franklin C. Donecker, age 65, service 30 years, during last 20 years, 18 years 2

months; Walter E. Johnson, age 69, Chicago service 24 years 6 months, outside 11 years; Anna F. Loftus, age 69, Chicago service 43 years; Florence A. McCarthy, age 66, service 31 years, during last 20 years, 15 years 8 months; Katharine T. Murphy, age 67, service 48 years; Catherine A. Sullivan, age 67, service 42 years; Laura M. Truscott, age 67, Chicago service 19 years 4 months, outside 18 years; Fannie Williams, age 65, Chicago service 37 years; Martha Wilson, age 68, service 49 years.

517 Exh. 4-v December 13, 1933 Page 352

The foregoing Report No. 33325 was on motion of Mr. Buehler approved and adopted by vote on roll call, eight yeas, no nays.

519 Exh. 4-w December 27, 1933 Page 387

(33375) Voluntary Retirement

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 3 persons named for such retirement and effective dates, including Intervening Plaintiffs William Seabrook, age 66 service 38 years; Eleanor C. Smith, age 65, service 32 years.

520 Exh. 4-x December 27, 1933 Page 388

The foregoing Report No. 33375 was on motion of

521 (Exh. 4-y December 27, 1933 Page 389)

Mr. Buehler approved and adopted by vote on roll call, nine yeas, no nays.

522 Exh. 4-z January 24, 1934 Page 448

(33440) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 13 persons named for such retirement and effective dates, including Intervening Plaintiffs Anna S. Bishop, age 65, service 42 years; Jennie C. Chandler, age 65, service 37 years; Anna M. Cunningham, age 65, service 47 years; Fred C. Dunham, age 65, service 28 years;

523 (Exh. 4-aa January 24, 1934 Page 449)

Alice B. Ely, age 69, service 25 years, 9 months; Emma D. Knox, age 68, service 34 years; Agnes V. McIlhon, age 69, service 37 years; Frances I. McIlhon, age 67, service 37 years; Elmer L. Valentine, age 65, service 37 years; Emma A. Schreiner, age 65, service 45 years; Mabel Sykes, age 66, service 38 years; Mary Waters, age 66, service 34 years.

524 Exh. 4-bb January 24, 1934 Page 450

The foregoing Report No. 33440 was on motion of Mr. Buehler approved and adopted by vote on roll call, nine yeas, no nays.

525 Exh. 4-cc February 21, 1934 Page 481

(33469) Voluntary Retirement

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec.

370; Abst. 206) her qualifications for such retirement and effective date as to Intervening Plaintiff Elizabeth S. Bohman, age 66, service 30 years.

(33470) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 5 persons named for such retirement and effective dates, including Intervening Plaintiffs Annie E. Arnold, age 66, service 45 years; Jean W. Hubbard, age 70, service 25 years, 3 months; Ellen Pool, age 65, service 45 years; Mary Robson, age 65, service 35 years; Carrie A. Barracks, age 66, service 27 years.

526 Exh. 4-dd February 21, 1934 Page 483

The foregoing Reports Nos. 33469 and 33470 were on motion of Mr. Buehler approved and adopted by vote on roll call, seven yeas no nays.

527 Exh. 4-ee February 28, 1934 Page 522

(33518) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 4 persons named for such retirement and effective dates, including Intervening Plaintiffs Mary L. Hurley, age 68, service 46 years; Helen F. Roberts, age 67, service 41 years;

The foregoing Report No. 33518 was on motion of Mr. Buehler approved and adopted by vote on roll call, eight yeas, no nays.

528 Exh. 4-ff March 14, 1934 Page 578

(33575) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 6 persons named for such retirement and effective dates, including Intervening Plaintiffs Ida A. Bamberger, age 67, service 46 years; Elizabeth F. Daly, age 68, service 47 years; Nellie J. Hahn age 67, service 48 years; Edith Smalley, age 68, service 35 years; Edith Visger, age 68, service 46 years; Nora W. Walker, age 66, service 45 years.

529 Exh. 4-gg March 14, 1934 Page 579

The foregoing Report No. 33575 was on motion of Mr. Buehler approved and adopted by vote on roll call, nine yeas, no nays.

530 Exh. 4-hh April 11, 1934 Page 1173

(J-33640) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of the 3 persons named for such retirement and effective dates, including Intervening Plaintiffs Nancy G. Gladish, age 65, service 34 years; Nettie L. Jones, age 65, service 41 years.

531 Exh. 4-ii April 11, 1934 Page 1175

The foregoing Report No. J-33640 was on motion of

532 (Exh. 4-jj April 11, 1934 Page 1176)

Mr. Buehler approved and adopted by vote on roll call, eight yeas, no nays.

533 Exh. 4-kk April 25, 1934 Page 1228

(33690) Voluntary Retirement of Teachers

Recommendations of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of the 3 persons named for such retirement and effective dates, including Intervening Plaintiffs Zella C. Baird, age 65, service 27 years; Bertha Kuntz, age 65, service 42 years; Jessie F. Williams, age 66, service 34 years.

534 Exh. 4-ll April 25, 1934 Page 1229

The foregoing Report No. 33690 was on motion of Mr. Buehler approved and adopted by vote on roll call, nine yeas, no nays.

535 Exh. 4-mm May 9, 1934 Page 1253

(33739) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh 1 (Rec. 370; Abst. 206) qualifications for such retirement and effective date of the person therein named.

536 Exh. 4-nn May 9, 1934 Page 1254

The foregoing Report No. 33739 was on motion of Mr. Buehler approved and adopted by vote on roll call, ten yeas, no nays.

537 Exh. 4-oo May 23, 1934 Page 1314

(33790) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) her qualifications for such retirement and effective date as to Intervening Plaintiff Elizabeth R. Rawson, age 65, service 32 years.

538 Exh. 4-pp May 23, 1934 Page 1320

The foregoing Report No. 33790 was on motion of Mr. Walker approved and adopted by vote on roll call, nine yeas, no nays.

539 Exh. 4-qq June 27, 1934 Page 1466

(33950) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 13 persons named for such retirement and effective dates, including Intervening Plaintiffs Almeda Bedwell, age 67, service 42 years; Bertha L. Bowen, age 66, service 25 years; Sara Frances Clinton, age 65, service 45 years; Anna E. Lancaster, age 65, service 40 years; Carrie E. Mathews, age 68, service 44 years; Jane A. Maloney, age 67, service 47 years; Ida M. Pahlman, age 68, service 50 years; Mary Josephine Parker, age 69, service 25 years 2 months; Hermine Schramm, age 65, service 39 years; Elizabeth Smith, age 65, Chicago service 20 years, outside 18 years; Kate O. Guenther, age 69, service 50 years.

540 Exh. 4-rr June 27, 1934 Page 1468

The foregoing Report No. 33950 was on motion of Mr. Buehler approved and adopted by vote on roll call, ten yeas, no nays,

542 (Whereupon the plaintiffs rested their case in chief.)

543 Mr. Righeimer: I would like to proceed in support of the motion which was made by the City in which we join to strike the bill.

Mr. Carter: I still think that motion is not before us here.

The Court: Objection overruled. I permitted counsel to file his motion to strike this Answer after an argument was heard, and I shall let the defendant at this time go back to the original Bill on the same kind of a motion.

Mr. Carter: Of course, part of the ground is that we never had any notice they were going to do such a thing until today. They did say they would do it a week ago but I expected them to do it before now if they were going to.

Mr. Righeimer: It is the position of the Board that this Bill should be dismissed for the following reasons: First, because the plaintiffs are in the wrong forum; Second, if they have not sought the proper remedy they should seek it if such a remedy is available in a suit of like character, involving the precise questions which are involved in determining questions arising out of this Bill; Third, it is our position, in any event, this action here is predicated upon a bill which sets up no equity.

544 As to the wrong remedy, I want to call attention to admissions made in argument advanced by Mr. Carter and right along the line of this evidence here.

He says, in effect, that the placing of the teachers on this so-called pension, the retired list, is a mere ministerial act and we agree with him on that.

If the law requires it to be done, we have no discretion in the matter.

I take it there is no contention that the Legislature had not a right to pass the original Miller Law and no contention that it did not have a right to pass an amendment to the Miller Law.

The Court: The Board's contention here is that they were obliged to do what they have done because of the amendment to the Miller Law passed in June 1935? The Board says it has complied with that Law.

Mr. Righeimer: And we have no discretion.

The Court: They pass that law and it has no discretion. I do not understand how the plaintiffs will mandamus the Board to comply with the original Law when there has been an amendment of that law and the Board is complying with that amendment.

Mr. Righeimer: By setting up that the Miller Law, as they set up in this case—of course, he has two strings to his bow, but disregarding one of the strings, he says that this amendment to the Miller Act passed in 1935 is void.

The Court. Unconstitutional.

Mr. Righeimer: Yes. Therefore, the law which governs the rights of his clients is the law before the amendment was introduced.

545 It always gets around in a circle, as to whether there are vested rights and whether these rights are being taken away and if they are being taken away, which is the proper form to dispose of it.

The Court: Well, that point would go to the constitutionality of this amendment.

Your alibi, if you will pardon the term alibi, your reason for what you have done is the amendment to the Miller Law.

Mr. Righeimer: Just exactly.

The Court: Passed or enacted in 1935. According to the authorities Mr. Carter in his argument cited weren't there decisions—I made notes of them. Personally, I think the authorities there say that a pension, purely a pension was not a vested right.

Mr. Carter: That is, while they are still in the active service. But that once they are out in the retired status—

The Court: Then there is some authority for that?

Mr. Carter: Yes.

Mr. Righeimer: If your Honor determines this pension is not a vested right, as I think you must under the decisions which we shall read to you, that
546 then he leaves his clients in a position where he has got to say we did not administer the law properly by giving them $500 a year—that they should have all

of $1500. Or it puts them in a position where there is no provision whatever for them, where they are not even entitled to $500.

Wednesday, December 18, 1935.

Mr. Carter: Plaintiffs Burns, Reynolds and Paterson applied for voluntary retirement in June, 1935, and at the meeting of the Board of June 26, 1935, it was referred to the General Committee. After the new act became effective in July they were compulsorily retired. Counsel for the Board conceded in argument that they did not have any discretion, that it was a mere ministerial act.

Mr. Righeimer: All we deny is the custom—we concede it is a ministerial act.

Mr. Carter: Now, if your Honor please, we have these exhibits which we offered in evidence yesterday, or will have them. That the year 1930-1931
547 shall be marked Plaintiffs' Exhibit 1; 1931-1932 will be Plaintiffs' Exhibit 2; 1932-1933 will be Plaintiffs' Exhibit 3; 1933-1934 will be Plaintiffs' Exhibit 4; 1934-1935 will be Plaintiffs' Exhibit 5. I will hand those in tomorrow.

The Court: I won't shut out either of you gentlemen to get your record complete, because this is important to all parties concerned, of such importance that it is better to take a little time and have it all in.

Mr. Carter: I will present the order on that tomorrow and I will bring these exhibits in at the same time.

The Court: Yes.

(Which was all of the evidence offered, received or adduced and all the proceedings had on the hearing of above motion.)

Monday, February 24, 1935

Present: Alfred R. Bates, for Plaintiffs; Frank S. Righeimer, Ralph Condee, Frank Schneberger, for Defendants.

The Court: Gentlemen, I am ready to pass on this suit for an injunction.

One Chester C. Dodge, on behalf of himself and many teachers of the Chicago Board of Education, instituted this injunction suit against the Board of Education to restrain the Board from complying with a new—with an amended statute to the old Miller Law, which provided for certain pensions to be paid for teachers under certain conditions.

The amendment was in reducing the amount of
548 pension, under those circumstances and conditions, to teachers. The plaintiffs' contention here is that if this amendment applies to the plaintiffs the amendment is unconstitutional.

There was also a contention urged by the plaintiffs that this amendment did not apply to the teachers.

The contention of the defense was that the remedy should have been in mandamus rather than injunction. It was also a contention of the defense that the pension right is not a vested right; it is a creature of the Legislature and therefore can be regulated, modified or amended by the Legislature.

I listened to the arguments,—very intelligent, enlightening, complete arguments,—by both sides in this case, which consumed several afternoons. On the completion of the oral argument both sides submitted very complete, elaborate briefs, and reply briefs.

The Court has considered fully the importance of this litigation to all parties to the suit, and gave attentive ear to the arguments and studied assiduously and carefully the briefs and reply briefs submitted by counsel at the conclusion of their arguments. The Court has had this under advisement for some time because of the importance of this litigation to all parties concerned.

The contention of the defense that this is not a proper remedy the Court is inclined to believe contains some merit. At this time, however, the Court is not passing on that proposition.

It was also a contention of the defense that the suit now pending in the Circuit Court of Cook County, in which another teacher is plaintiff, includes the same proposition as involved in the suit before me. At this time the Court is not going to pass upon that proposition. As I say, there is some merit in the contention of the defense that this suit should have been a suit for mandamus rather than a suit for injunction.

The Court is going to pass on this case from the main issue involved,—I may say the meat of this controversy.

549 I am satisfied that a pension right is not a vested right. It is a creature of the Legislature. I am of

the opinion that it can be modified, changed, or altered by the Legislature, and the judgment of the Court will be, in this injunction suit, that the injunction is denied and the bill dismissed for want of equity.

Draft your order along that line, gentlemen.

Now gentlemen, I will not add to that order from what I have said here. I have given this a great deal of consideration and I have made my statement very brief, and that will be the form of my order,—so it won't be necessary to draft a very lengthy order. I think that covers the whole situation in a nutshell.

Mr. Bates: There is one thing I should like to point out. Since we filed the last intervening petition there have been eight others who want to be joined. They have not yet been joined and I don't know whether, under the circumstances, they will join. I would like to have an opportunity to consult Mr. Carter on that. It doesn't take very long by air mail.

Mr. Righeimer: Whoever might come in, they would be people represented by some individuals of the class to which any other persons may belong, and the facts are the same, and it has always been the policy of the Board,—always will continue to be the policy of the Board—that regardless of the parties to the litigation, if there are any rights which affect any parties in any particular class, which have been adjudicated one way or another, even those not in the litigation would certainly have the benefit of the litigation. A public body could

not afford to do any other thing and survive. As the Court has announced its decision, we should like to draw up an order which substantially conforms to what the Court has said.

The Court: I cannot see any great rush, Judge. You draft your order and submit it to Mr. Bates and he can take it up by air mail with Mr. Carter. You can get that thing back in a week, can't you?

And give the counsel on the other side a chance
550 to look it over.

Make it March 3d. A week from tomorrow.

There will be no argument,—just for the submitting of that order.

(Which was all the evidence offered, received or adduced and all the proceedings had on the trial of said cause.)

551 As matters and things hereinabove set forth do not fully appear of record, the Plaintiffs tender this as their "Report of the Proceedings at the Trial" and pray same may be signed and sealed by the Judge pursuant to statute, which is accordingly done this 24th day of March, 1935.

(Signed) Harry B. Miller,
Judge of the Superior Court.

Presented March 12, 1936.

552 Stipulation that original Report of Proceedings may be used in making up transcript of record and may be incorporated in said transcript upon any appeal of said cause.

553 Stipulation that original exhibits offered in evidence in case may be incorporated in the Proceedings at the Trial in lieu of copies thereof.

555 Certificate of Clerk of Superior Court to perfect and complete transcript of record (except original Report of Proceedings which is by stipulation incorporated herein and made a part hereof) in said cause.

ALLAN J. CARTER,
Attorney for Appellants.

ALFRED R. BATES,
C. T. B. GOODSPEED,
Of Counsel.

BLANK

PAGE

IN SUPREME COURT OF ILLINOIS

[Title omitted]

ORDER OF SUBMISSION—June 16, 1936

Now on this day come the parties hereto and this being one of the days set apart for the call of the docket under the rules of this Court, and it appearing to the Court that appellants hath filed herein a duly certified transcript of the record and proceedings of the Court below, together with printed abstracts thereof, and briefs and arguments of counsel in support of the errors assigned herein, and entered motion to reverse the judgment and for costs and procedendo, and said motions being taken under advisement for final hearing, and the Clerk of this Court reporting that said cause is now ready to be taken, and said cause having been argued orally by Allan J. Carter for appellants and by Frank S. Righeimer for appellee is here submitted for the consideration and judgment of the Court.

Therefore it is ordered by the Court that this cause be and the same is hereby taken under advisement.

IN SUPREME COURT OF ILLINOIS

June Term, A. D. 1936

Number 23661. Agenda 24

CHESTER C. DODGE et al., Appellants,

vs.

BOARD OF EDUCATION OF THE CITY OF CHICAGO et al., Appellees

Appeal from Superior Court, Cook County

OPINION—Filed October 27, 1936

Mr. Justice STONE delivered the opinion of the court:

Appellants' bill filed in the Superior Court of Cook County seeking to enjoin appellees, Board of Education of the City of Chicago and others, from reducing teachers'

pensions as applied to them, was dismissed for want of equity. They bring the cause here on the ground that a constitutional question is involved in the construction given the act by the chancellor.

The original complaint was filed by twenty plaintiffs as a class suit on behalf of themselves and all others similarly situated. The Board of Education of the City of Chicago and certain of its officers and the City of Chicago and certain of its officers were made defendants. The act which is made the basis of this complaint is commonly known, and is hereinafter referred to, as the "Miller Act". It is an act having to do with teachers' pensions (Smith-Hurd Revised Stat. 1927, Section 614a, Chap. 122, par. 614a, p. 2586). The complaint of the appellants is that by the revision of that act in 1935 vested rights of those teachers who had retired or sought to do so, prior to the enactment of such revision, were taken away. These appellants all have either retired or sought to retire before the 1935 amendment of the Miller Act. The only provision of that amendment here attacked has to do with the reduction of pensions provided by the act.

This act was originally passed in 1926 and entitled: "An Act to provide for compulsory retirement of teachers, etc., and the payment of retirement annuities." The Act provides a pension in addition to that provided by the Teachers' Pension Act of 1909. As originally enacted, the Teachers' Pension Act provided for voluntary retirement of teachers. The Miller Act provided for compulsory retirement of teachers at the age of 70 and for the payment of retirement annuities of $1500 per annum. This was a separate act and in nowise affected the Teachers' Pension Law which provided a pension of $1,000 per year on voluntary retirement. The additional annuities, under the Miller Act, are paid solely out of funds raised by taxation. Teachers contribute nothing toward that fund.

In 1927 the Miller Act was amended to fix, by Section 3, the annuities on a sliding scale from $1,000 to $1,500 to teachers voluntarily retiring between the ages of 65 and 70. This, to teachers retiring under 70, was a reduction from the flat amount of $1,500 given by the original act.

By the amendment, effective on July 12, 1935, the title of the act was amended to read as follows: "An Act to amend sections 1 and 2 and the title of 'An Act to provide

for the compulsory and voluntary retirement of teachers, principals, district superintendents, and assistant superintendents and for the voluntary retirement of superintendents of schools and members of the Board of Examiners, and for the payment of retirement annuities,' approved May 19, 1926, as subsequently amended, and to repeal section 3 of said Act." (Session Laws of 1935, p. 1378.) This amended act abolished the provisions for voluntary retirement and fixed the compulsory retirement age at 65 years. The annuities were reduced to a flat rate of $500 annually. A very large number of former teachers have joined in this proceeding as did some who sought to retire in May and June 1935, under the Miller Act, before the enactment of the 1935 amendment.

Appellants' complaint is bottomed on the proposition that the rights of teachers retiring or entitled to retire prior to the 1935 amendment were fixed and determined by the law in effect at the time of their retirement or written request for retirement and could not be abolished or reduced by subsequent act of the legislature, and that, if the 1935 amendment is to be construed as the Superior court construed it, it is in violation of Section 2 Article XIV of the Constitution of Illinois and the Fifth Amendment of the Federal Constitution and in violation of Section 10, Article I of that Constitution, as an attempt to take away vested rights, to take property without due process of law, and to impair obligations of contracts. The prayer of the bill is that the Board and its appropriate officers be required to take the necessary action to permit requests for voluntary retirement, under the law in force at the time the requests were made for such, and that it take such action as necessary to restore the annuities then in force. The City of Chicago filed a motion to dismiss the complaint on the ground of want of equity. The Board of Education answered denying the complainant's right to the relief sought. Many teachers and former teachers intervened.

As is stated by counsel for appellants in their reply brief, "'Appellants' case rests upon the proposition that they have vested property rights to the payment of future installments of the annuities on the basis fixed by the law in force at the time they retired, or being entitled to retire, made application for retirement.'' This question will be first considered. They cite DeWolf v. Bowley, 355 Ill. 530; Proter

v. Loehr, 332 Id. 353; Beutel v. Foreman, 288 Id. 106; People v. Abbott, 274 Id. 380; Hughes v. Traeger, 264 Id. 612 and Pennie v. Reis, 132 U. S. 464, 33 Law Ed. 426, in support of this claim.

The case of DeWolf v. Bowley, supra, did not involve the question of vested property rights but announced the oft-repeated doctrine under which pensions to retired officers are sustained, i. e., that a public benefit accrues in two ways, by encouraging such officers or employees to remain in the service and by retiring from public service those who have become incapacitated from performing the duties as well as they might be performed by younger or more vigorous persons. The opinion in that case reviews decisions of this and other courts.

Porter v. Loehr, supra, concerned an amendment to the Police Pension Act which increased the pension of retired police officers and applied such increased pensions to those who had retired under the previous act. The act was held unconstitutional for the reason that the increase of pensions to retired policemen did not contemplate the rendition of any additional service by the pensioners and the amount of their pensions was fixed by law when they retired, and had their sole basis in services rendered prior to retirement. This was the ground upon which the invalidity of the act was held and not, as counsel for appellants argue, because of retroactive application of such amendment.

Beutel v. Foreman, supra, was a mandamus proceeding to compel the Board administering the Police Pension Fund Act to grant a pension. Beutel retired after 20 years of service as a member of the police force and filed an application for pension. About three months after filing this application the act was amended adding the requirement that the retired officer shall also have reached the age of 50 years. Beutel had not reached that age and the Board denied his petition. The act prior to the amendment of July, 1917, had no 50-year requirement. It was argued that Beutel had a vested right in a pension when on March 31, 1917, he retired and made application for such pension and that the legislature could not take away that right by subsequent legislation imposing another requirement. It was argued that the amendment was unconstitutional as violating the property right vested in him. It was there held that Beutel enjoyed no right which could not be altered by the legislature.

A right, to be within the protection of the constitution, must be a vested right. It must be something more than a mere expectancy based upon an anticipated continuance of an existing law. If before rights become vested in particular individuals the convenience of the state induces amendment or repeal, such individuals have no cause to complain. People v. Clark, 283 Ill. 221; 1 Lewis on Statutory Construction, 2nd ed., Sec. 284. It was held in the Beutel case that municipalities may take away the right to pensions under circumstances shown in that record, without affecting the contract right of pensioners or violating the constitution. Counsel for appellants say that the doctrine of the Beutel case is to be applied only to facts on that record, which showed that no right in the retiring officer had become vested, while here the rights of these retired teachers had become vested before the amendment of 1935. We are unable to see the lack of analogy on the facts. In that case Beutel had complied with the statute as it existed at the time he retired but it was changed before the Board acted on his application for pension. The opinion in that case discusses the authorities fully and need not be re-examined here. We adhere to the holding there made. None of the cases cited by counsel for appellants have modified the principles laid down in the Beutel case. The decisions of this court have uniformly been that pensions are not based on contract, but are mere expectancies based upon anticipated continuance of existing law and that future installments of pensions are not vested property rights. It follows that the state may reduce future installments of pensions without violating the provisions of the State or Federal constitution.

Counsel for appellants argue that if an amendment may not be made retroactive to include increased pensions to those who had retired before such increase was authorized, then by the same token the legislature should not be permitted to reduce pensions by the retroactive application of such amendatory statute, and they call attention to what they deem an analogy in logic between this case and Porter v. Loehr, supra. It will be observed however that the basis of the holding in the Porter case was not that the amendatory act could not be made retroactive but the reason for the invalidity of that act as applied to Porter was that an increase of pension to those retiring before such increase

was authorized, was not in contemplation of services to be rendered nor an inducement to continue service but was a gratuity, and so came within constitutional inhibition.

Appellants' counsel also say that Miner v. Stafford, 326 Ill. 204, supports their contention that this act should not be construed to be retroactive in its application. In that case petitioner's husband was killed some six months before an amendment to the Pension Act increasing pensions to widows of policemen who were killed in service was enacted. It was held that her right to a pension was one given by the act as it existed at the time the right to receive a pension accrued and not by the amendment. While the opinion refers to the fact that nothing is said in the amendatory act showing an intention to give it retroactive application, yet the basis of the opinion was that her right to a pension arose before the amendment was enacted. As is pointed out in Porter v. Loehr, supra, to give a pension act of that character retroactive effect would be to violate the constitutional prohibition against donation of public funds for private interests.

In this case the 1935 amendment of the Miller Act by specific reference repealed Section 3, which fixed the amount of the retirement annuities, leaving nothing in the act other than the provision for $500 per annum to authorize the payment of those annuities. It would be difficult to conceive of stronger evidence of legislative intent to make the amendment retroactive in its application.

In Hughes v. Traeger, supra, it was held that a change in the disposition of a fund, a portion of which was contributed from public taxation and a portion from the salaries of employees, does not violate any vested rights of those interested therein, since such right, until it accrues, is only in the nature of an expectancy created by law and which the law may revoke or destroy. Counsel argue that this case is authority for their claim of vested right because of the language of the opinion: "Until the happening of the event designated by the statute for its distribution he has no vested right in the fund but only an expectancy created by the law", and that in this case the happening of the event designated by the statute was the retirement of teachers under the provisions of the Miller Act. The doctrine, as we have seen, is thoroughly established in this state, that the state may control the giving or taking away of pensions,

and, in consideration of such expressions as "happening of contingency" this doctrine must be borne in mind. If there became due to any of these appellants any installment under the Act prior to the amendment of 1935, which was not paid, they would have a cause of action to recover it, for until a statute is amended the processes of the law are afforded those who are beneficiaries under it. It is not intimated in this case that there are any such unpaid installments.

Pennie v. Reis, supra, relied upon by appellants, arose in California. In 1878 a statute was adopted in that state providing that upon death of a police officer after June 1, 1878, there should be paid to his legal representatives, out of a pension fund established by the act, the sum of $1,000. The act required contributions to the fund and provided that in case a policeman resigned he should be repaid the amounts he had contributed. On March 4, 1889, a new pension law was enacted providing for the merger of certain pension funds and repealing the statute under the terms of which $1,000 was to be paid to a deceased policeman's estate. This amendment occurred just nine days before the death of the policeman whose representatives were seeking the award. It was contended there, as here, that the Act of 1889 violated constitutional provisions against the impairment of the obligation of contract and destroyed vested rights. It was held that this was not so. The court there said that "until the particular event should happen upon which the money or part of it was to be paid there was no vested right in the officer to such payment. His interest in the fund was until then a mere expectancy created by law and liable to be revoked or destroyed by the same authority."

The difference in nature between a lump sum pension or award and a continued pension is obvious, and is sufficient to mark the difference in the rule with reference to interest therein as found in the decisions of the courts. Under a statute such as the one in Pennie v. Reis, supra, where, on the happening of a certain event, a certain sum of money became due, the interest of the beneficiary when such event takes place is analogous to the interest of a pensioner whose installment or pension has become due under the terms of a Pension act. Pannie v. Reis, supra, does not, in any way, militate against the rule generally adopted that pension acts

do not create in their beneficiaries a vested interest in future installments of the pensions created thereby.

Counsel for appellants seek to draw a distinction between the payment of a pension and the payment of an annuity as affecting the question of a vested right therein. The Miller Act uses the term "annuity". Counsel say that even though this court has held that pensioners have no vested right in future installments of pensions, yet there is a sufficient difference between a pension and an annuity to justify their position that appellants have a vested right in such annuity. They say that annuities are in the nature of compensation for services theretofore rendered for which compensation has been withheld. We are unable to see the distinction. The plan of payment is the same, the purposes are evidently the same and the use of the term "annuity" instead of "pension"—which is but an annuity—does not seem to us to result in the distinction for which counsel for appellants contend. Moreover it may be observed that counsel's contention that these payments are annuities of compensation withheld for services rendered if of force, would endanger the entire act, since Section 19, Article IV, of the Constitution prohibits the granting or authorizing of extra compensation, fee or allowance to any public officer or contractor after service has been rendered or contract made.

Counsel for appellants also argue that under Section 4 of the statute on Statutes (Sec. 4, Chap. 131, Smith Hurd Stat. 1935, p. 3140), the amendment to the Miller Act should be construed as retaining provisions for those teachers who retired before the amendment. Said Section 4 provides that "no new law shall be construed to repeal a former law as to * * * any right accrued or claim arising under the former law * * * before the new law takes effect." This statute can be of no avail unless the right of appellants to this pension is a vested right. In addition it may be observed that the Miller Act of 1935 is a complete act within itself revising the old Miller Act. There is therefore no room for the application of Section 4 of the statute on Statutes.

We are of the opinion that the Superior Court did not err in dismissing appellants' bill. The decree is therefore affirmed.

Decree affirmed.

IN SUPREME COURT OF ILLINOIS

No. 23661

CHESTER C. DODGE et al., Appellants,

vs.

BOARD OF EDUCATION OF THE CITY OF CHICAGO et al., Appellees

Appeal from Superior Court Cook

JUDGMENT—October 27, 1936

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid as the matters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises for that it appears to the Court now here that neither in the record and proceedings aforesaid nor in the rendition of the decree aforesaid is there anything erroneous, vicious or defective, and in that record there is no error;

Therefore, it is considered by the Court that the decree of the Superior Court aforesaid be affirmed in all things and stand in full force and effect, notwithstanding the said matter and things therein assigned for error. And it is further considered by the Court that the said appellees recover of and from the said appellants costs by them in this behalf expended, to be taxed, and that they have execution therefor.

I, Adam F. Bloch, Clerk of the Supreme Court of the State of Illinois and Keeper of records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In testimony whereof I have set my hand and affixed the Seal of the said Supreme Court, in Springfield, in said State, this 4th day of February, in the year of our Lord one thousand nine hundred and thirty-seven.

Adam F. Bloch, Clerk of the Supreme Court. (Seal of the Supreme Court, State of Illinois.)

IN SUPREME COURT OF ILLINOIS

[Title omitted]

ORDER DENYING REHEARING—December 4, 1936

Now on this day the Court having duly considered petition for rehearing filed herein and the Court being now advised in the premises doth overrule the prayer of the petition and denies a rehearing of this cause.

IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

PETITION FOR APPEAL AND ASSIGNMENTS OF ERROR—Filed January 19, 1937

To the Honorable the Supreme Court of the United States:

Chester C. Dodge, Catherine L. Baird, Azile B. Reynolds, and nine hundred forty-two others respectfully pray an appeal to this Court from the final decision of the Supreme Court of Illinois in the above-entitled cause. That Court filed its opinion October 27, 1936. A petition for rehearing was duly filed which, after consideration, was denied by that Court on December 4, 1936.

This case is one in which is drawn into question the validity of a statute of the State of Illinois, to wit, an Act effective July 12, 1935 (Laws of Illinois 1935, page 1378), hereinafter referred to as the amended Miller Act, upon the ground that the said statute is repugnant to Section 10, Article I, of the Constitution of the United States, and is also repugnant to the Fourteenth Amendment to the Constitution of the United States.

The final decision of the Supreme Court of Illinois, which court is the highest court of said State in which a decision in the above-entitled cause could he had, and the court of last resort in all cases arising in the State of Illinois, is in favor of the validity of said statute.

Therefore, in accordance with Rule 46, Paragraph 2, of the Rules of the Supreme Court of the United States (28 U. S. C. A.) appellants respectfully show that this case is

one in which under the legislation in force when the Act of January 31, 1928 (45 Stat. 54), as amended by the Act of April 26, 1928 (45 Stat. 466), was passed, to-wit, under Sec. 237 (a) of the Judicial Code (28 U. S. C. A., Sec. 344), a review can be had in the Supreme Court of the United States on appeal.

Appellants feel themselves aggrieved by the final judgment and decision of the Supreme Court of Illinois and respectfully pray that an appeal be allowed to the Supreme Court of the United States and that an order be entered fixing the amount of the cost bond.

Appellants present the following assignments of error:

1. The Supreme Court of Illinois erred in holding that the 1935 Amendments to the Miller Act as applied to appellants did not violate Section 10, Article I, of the Constitution of the United States as impairing the obligations of contracts.

2. The Supreme Court of Illinois erred in holding that the 1935 Amendments to the Miller Act as applied to appellants did not violate the Fourteenth Amendment to the Constitution of the United States as taking property without due process of law.

3. The Supreme Court of Illinois erred in holding that the 1935 Amendments to the Miller Act as applied to appellants did not deprive appellants of vested contract rights in violation of Section 10, Article I, of the Constitution of the United States.

4. The Supreme Court of Illinois erred in holding that the 1935 Amendments to the Miller Act as applied to appellants did not deprive appellants of vested and accrued property rights in violation of the Fourteenth Amendment to the Constitution of the United States.

5. The Supreme Court of Illinois erred in refusing to hold, as contended by appellants, that as applied to them the 1935 Amendments to the Miller Act were unconstitutional and void in reducing petitioners' annuities because in violation of Section 10, Article I, of the Constitution of the United States.

6. The Supreme Court of Illinois erred in refusing to hold, as contended by appellants, that as applied to them the 1935 Amendments to the Miller Act were unconstitu-

tional and void in reducing petitioners' annuities because in violation of the Fourteenth Amendment to the Constitution of the United States.

7. The Supreme Court of Illinois erred in affirming the decision of the trial court dismissing appellants' complaint for want of equity.

Appellants respectfully pray that because of the foregoing errors the judgment of the Supreme Court of Illinois, dated October 27, 1936, which on the denial on December 4, 1936 of appellants' petition for rehearing became final as of October 27, 1936, be reversed and a judgment entered in favor of appellants with costs of suit.

Respectfully submitted, Chester C. Dodge, Catherine L. Baird, Azile B. Reynolds, and the 941 other Appellants, by Allan J. Carter, Their Attorney. Alfred R. Bates, C. T. B. Goodspeed, Karl D. Loos, Preston B. Kavanagh, of Counsel.

[File endorsement omitted.]

SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING APPEAL—Filed January 19, 1937

The appellants in the above entitled suit, and each of them, having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the judgment made and entered in the above entitled suit by the Supreme Court of the State of Illinois on the 27th day of October, 1936, and from each and every part thereof, and having presented and filed their petition for appeal, assignment of errors, prayer for reversal and statement as to jurisdiction, pursuant to the statutes and the rules of the Supreme Court of the United States in such case made and provided:

It is now here ordered that an appeal be, and the same is hereby, allowed to the Supreme Court of the United States from the Supreme Court of the State of Illinois in the above entitled cause, as provided by law, and it is further ordered that the clerk of the Supreme Court of the State of Illinois

shall prepare and certify a transcript of the record, proceedings and judgment in this cause and transmit the same to the Supreme Court of the United States, so that he shall have the same in said Court within forty days of this date.

And it is further ordered that security for costs on appeal be fixed in the sum of $250.00. And now such bond is presented and approved by me.

Dated January 18, 1937.

Lott R. Herrick, Chief Justice of the Supreme Court of the State of Illinois.

[File endorsement omitted.]

Bond on appeal for $250.00, approved and filed Jan. 19, 1987, omitted in printing.

Citation, in usual form, showing service on Richard S. Folsom and Barnet Hodes, filed January 20, 1937, omitted in printing.

IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

STIPULATION AS TO TRANSCRIPT OF RECORD—Filed February 4, 1937

It is hereby stipulated by and between the parties hereto, by their respective counsel, without prejudice to appellees' motion, to dismiss this appeal, or in the alternative to affirm the judgment of the Supreme Court of Illinois, and to its full consideration by the Supreme Court of the United States, that there shall be included in the transcript of the record in above entitled cause to be forwarded to the Clerk of the United States Supreme Court for use in the appeal to that Court which has heretofore been allowed by the Chief Justice of the Supreme Court of Illinois, the following:

1. Abstract of Record filed in the Supreme Court of Illinois in said cause by Chester C. Dodge et al., appellants in that Court;

2. Opinion of the Supreme Court of Illinois in the final decision of that Court as handed down on December 4, 1936;

3. Judgment entered in the Supreme Court of Illinois confirming the judgment of the Superior Court of Cook County, Illinois;

4. Petition for Appeal to the Supreme Court of the United States, including Assignments of Error, presented to the Chief Justice of the Supreme Court of the State of Illinois on January 18, 1937;

5. Jurisdictional Statement under Rule 12 of the Rules of the Supreme Court of the United States, also presented to the Chief Justice of the Supreme Court of Illinois on January 18, 1937;

6. Order entered January 18, 1937, by the Honorable Lott R. Herrick, Chief Justice of the Supreme Court of Illinois allowing appeal, fixing amount of bond, and approving the same;

7. Cost Bond approved by the Honorable Lott R. Herrick, Chief Justice of the Supreme Court of Illinois, on January 18, 1937;

8. Citation to Appellees issued by the Chief Justice of the Supreme Court of Illinois, together with acknowledgment of service of same upon appellees;

9. Notice served by appellants upon appellees as to allowance of appeal and that copies are therewith served upon appellees of said Petition for Appeal, including Assignments of Error, of said Jurisdictional Statement under Rule 12 of the Rules of the Supreme Court of the United States, and of said Order allowing appeal, which said Notice was given under Paragraph 2 of Rule 12 of the Rules of the Supreme Court of the United States and contained a statement directing attention of Appellees to the provisions of paragraph 3 of said Rule 12, together with acknowledgment of service by appellees of said Notice and of the copies of the documents as therein set forth;

10. Statement by appellees of matters and grounds making against the jurisdiction of the Supreme Court of the United States;

11. Motion of appellees to dismiss this appeal or affirm the decision of the Supreme Court of Illinois;

12. Notice served by appellees upon Appellants pursuant to Rule 12 paragraph 3 of the Rules of the United States Supreme Court as to the filing by appellees with the Clerk

of the Supreme Court of Illinois, appellees' statement of matters and grounds making against the jurisdiction of the Supreme Court of the United States, and motion by appellees to dismiss the appeal, or in the alternative to affirm the judgment of the Supreme Court of the State of Illinois, together with acknowledgment of service by appellants of said notice and of the copies of the documents therein and above set forth.

13. This stipulation designating portions of the record to be included in the transcript.

Allan J. Carter, Attorney for Chester C. Dodge, Catherine L. Baird, Azile B. Reynolds, et al., Appellants. Richard S. Folsom, Frank S. Righeimes, Attorneys for Board of Education et al., Appellees. Barnet Hodes, Attorney for City of Chicago et al., Appellees.

Dated February 2, 1937.

[File endorsement omitted.]

Clerk's certificate to foregoing transcript omitted in printing.

Certificate of transmittal omitted in printing.

IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON BY APPELLANTS AND DESIGNATION OF THE PARTS OF RECORD TO BE PRINTED—Filed February 9, 1937

Come now the appellants and adopt their Assignments of Error set forth in their Petition for Appeal filed herein, as their statement of the points to be relied upon. Appellants represent that the whole of the Record, as filed in this Court, is necessary for the consideration of the case.

Allan J. Carter, Attorney for Chester C. Dodge et al., Appellants.

Received a copy of the foregoing Statement of Points and Designation of Record, this 8th day of February, 1937.

Richard S. Folsom, Attorney for Board of Education of the City of Chicago; James B. McCahey; Ernest Buehler; Irwin Walker; Paul Drymalski; Charles W. Fry; Joseph P. Savage; William D. McJunkin; Harry W. Solomon; Joseph J. Salat; William H. Bied; Mrs. W. S. Hefferan; Frank H. Landmesser; Harry H. Brackett. Barnet Hodes, Jr., Attorney for City of Chicago; Edward J. Kelly; Gustave A. Brand and Robert Upham.

[File endorsement omitted.]

Endorsed on cover: File No. 41,253. Illinois, Supreme Court. Term No. 713. Chester C. Dodge, Catherine L. Baird, Azile B. Reynolds, et al., appellants, vs. Board of Education of the City of Chicago et al. Filed February 5, 1937. Term No. 713, O. T., 1936.

BLANK

PAGE

BLANK

PAGE

FILE COPY

FILED
FEB 5 1937
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. [redacted] 5

CHESTER C. DODGE, CATHERINE L. BAIRD, AZILE B. REYNOLDS ET AL.,

Appellants,

vs.

BOARD OF EDUCATION OF THE CITY OF CHICAGO ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

STATEMENT AS TO JURISDICTION.

ALLAN J. CARTER,
Counsel for appellants.

ALFRED R. BATES,
C. T. B. GOODSPEED,
KARL D. LOOS,
PRESTON R. KAVANAGH,
Of Counsel.

BLANK

PAGE

INDEX.

Subject Index.

	Page
Statement as to jurisdiction	1
Statutory provisions sustaining jurisdiction	2
Statute of the State, the validity of which is involved	2
Date of final judgment and date of application for appeal	4
Opinion of the court below	5
Nature of the case and rulings below	5
Origin and treatment of the Federal constitutional questions by the courts below	9
The Federal questions raised in this case are substantial	11
Cases believed to sustain the jurisdiction	17
Appendix—Opinion of the court below	18

Table of Cases Cited

Byrd v. *Dallas*, 118 Tex. 28, 6 S. W. (2d) 738	16
City of Dallas v. *Trammell*, 96 S. W. (2d) 110	13
Cobbs v. *Home Insurance Co.*, 18 Ala. App. 206, 91 So. 627	16
Dismuke v. *United States*, 297 U. S. 167	13
Fellows v. *Connolly*, 193 Mich. 499, 160 N. W. 581	16
Home Building and Loan Assn. v. *Blaisdell*, 290 U. S. 398	17
Ingraham v. *Hanson*, 297 U. S. 378	17
Kavanagh v. *Board of Police Commissioners*, 134 Calif. 50, 66 Pac. 36	13
Lage v. *City of Marshalltown*, 212 Ia. 53, 235 N. W. 761	16
Larson v. *South Dakota*, 278 U. S. 429	16, 17
Long Island Water Supply Co. v. *Brooklyn*, 166 U. S. 685	16
Lynch v. *United States*, 292 U. S. 571	13
O'Dea v. *Cook*, 176 Cal. 659, 169 Pac. 366	16
Pacific Telephone Co. v. *Tax Commission*, 297 U. S. 403	17
Pennie v. *Reis*, 132 U. S. 464	13

Page

People v. *Clark*, 300 Ill. 583 4
Renz v. *Hibbing Firemen's Relief Assn.*, 186 Minn. 370, 243 N. W. 713 16
Retirement Board v. *McGovern*, 316 Pa. 161, 174 Atl. 400 13
Roddy v. *Valentine*, 268 N. Y. 228, 197 N. E. 260 ..... 13, 14
Seton Hall College v. *South Orange*, 242 U. S. 100 17
Stafford, State ex rel. v. *State Annuity Board*, 219 Wis. 31, 261 N. W. 718 16
State v. *Love*, 89 Neb. 149, 131 N. W. 196 16
Trotzier v. *McElroy*, 182 Ga. 719, 186 S. E. 817 15
United States Mortgage Co. v. *Matthews*, 293 U. S. 232 16
Worthen Co. v. *Kavanaugh*, 295 U. S. 56 17

STATUTES CITED

Act of Congress of Jan. 31, 1928, as amended by the Acts of April 26, 1928, c. 14, Sections 1 and 2, 45 Stat. 54; c. 440, 45 Stat. 456 (28 U. S. C. 861a and 861b) 2
Act of the Illinois Legislature effective May 19, 1926 (Cahill's Ill. Rev. Stat. 1927, Chap. 122, pars. 269(1), 269(2); Smith Hurd Ill. Rev. Stat. 1927, Chap. 122, pars. 614(a) and 614(b), Section 1 5
Section 2 6
Act of the Illinois Legislature effective July 1, 1927 (Laws of Illinois 1927, p. 722) Section 3 12
Act of the Illinois Legislature effective July 12, 1935 (Laws of Illinois 1935, p. 1378) Section 1 3
Section 2 3
Section 3 4
Constitution of the United States, Article I, Section 10 ..... 9, 10
Constitution of the United States, 14th Amendment 9, 10
Judicial Code, Section 237a (28 U. S. C. 344) 2, 4, 11, 16, 17
Tucker Act 14

TEXT BOOK CITED

Dillon on "Municipal Corporations", 5th Edition, Sections 430, 431 13

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 713

CHESTER C. DODGE, CATHERINE L. BAIRD, AZILE B. REYNOLDS ET AL.,

Appellants,

vs.

BOARD OF EDUCATION OF THE CITY OF CHICAGO ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS

JURISDICTIONAL STATEMENT PURSUANT TO RULE 12 OF THE SUPREME COURT OF THE UNITED STATES.

This is an appeal from a final judgment of the Supreme Court of Illinois, affirming a judgment of the Superior Court of Cook County, Illinois in favor of the validity of a statute of the State of Illinois which was attacked by appellants as in violation of their rights under the Con-

stitution of the United States, as will hereafter appear in detail in this Statement.

Appellants, former teachers in the educational system of the State of Illinois, are 945 in number (including those named in the caption hereof). All the parties who were appellants in the Supreme Court of Illinois are represented in this appeal. (R. 197, folio 268).

I.

Statutory Provisions Sustaining Jurisdiction.

The statutory provision believed to sustain the jurisdiction of the Supreme Court of the United States is Section 237 (a) of the Judicial Code (28 U. S. C., Section 344) reading, to the extent relevant here, as follows:

> "SEC. 237. (a) A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, * * * where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution * * * of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error. * * * ."

The remedy by writ of error under the foregoing section has been abolished and appeal substituted. (Act of January 31, 1928, as amended by the Act of April 26, 1928; C. 14, Sections 1 and 2, 45 Stat. 54; C. 440, 45 Stat. 456; 28 U. S. C., Sections 861 (a), 861 (b).)

II.

Statute of the State, the Validity of Which is Involved.

The Statute of the State of Illinois, the validity of which has been sustained by the Supreme Court of Illinois, the highest Court of that State, as not being violative of or repugnant to the provisions of the Constitution of the

United States is the statute effective July 12, 1935 (Laws of Illinois 1935, p. 1378). The provisions of this statute, hereinafter referred to as the Amended Miller Act, set forth verbatim, are:

"AN ACT to amend sections 1 and 2 and the title of 'An Act to provide for the compulsory and voluntary retirement of teachers, principals, district superintendents, and assistant superintendents, and for the voluntary retirement of superintendents of schools and members of the Board of Examiners, and for the payment of retirement annuities,' approved May 19, 1926, as subsequently amended, and to repeal section 3 of said Act.

Be it enacted by the People of the State of Illinois represented in the General Assembly:

SECTION 1. Sections 1 and 2 of 'An Act to provide for the compulsory and voluntary retirement of teachers, principals, district superintendents, and assistant superintendents, and for the voluntary retirement of superintendents of schools and members of the board of examiners, and for the payment of retirement annuities,' approved May 19, 1926, as amended, are amended to read as follows:

SECTION 1. In every city in this State having a population exceeding 250,000 inhabitants, the board of education of such city, as soon as practical after this law becomes effective, shall retire all teachers, principals, district superintendents and assistant superintendents in the public schools in such city, who are sixty-five or more years of age, and thereafter shall retire all teachers, principals, district superintendents and asssistant superintendents in the public schools of such city, on attaining the age of sixty-five years.

SECTION 2. Each person so retired from service shall be paid the sum of five hundred dollars ($500.00) annually and for life from the date of such retirement from the money derived from the general tax levy for

educational purposes: *Provided,* that any teacher, principal, district superintendent, or assistant superintendent so retired and receiving such annuity shall be subject to the call of the superintendent of schools in such city for consultation and advisory service: *And, provided, further,* that nothing in this Act contained shall in any way impair or prejudice any rights of a teacher, principal, district superintendent, or assistant superintendent so retired to annuity under other statutory provisions concerning any teachers' pension fund, or teachers' pension and retirement fund, established in accordance with the provisions of any statute of this State.

SECTION 2. The title of said Act is amended to read as follows: 'An Act to provide for the compulsory retirement of teachers, principals, district superintendents, and assistant superintendents, and for the payment of retirement annuities.'

SECTION 3. Section 3 of said Act is repealed." (The full text of this Act also appears in the R. 94, folio 97.)

III.

Date of Final Judgment and Date of Application for Appeal.

On December 4, 1936, the Supreme Court of Illinois denied a Petition for Rehearing which had been duly filed and considered. Thereupon, the opinion of said Court in this cause filed October 27, 1936, and the judgment of said Court entered October 27, 1936, became final as of that date. Under the decisions of the Supreme Court of Illinois (*People* v. *Clark,* 300 Ill. 583, and cases cited there) an original judgment of that Court upon the subsequent denial of a Petition for Rehearing is final as of the date of the original decision. The decision of the Supreme Court of Illinois is a final judgment within the meaning of Section 237a of the Judicial Code.

The date on which the petition for allowance of an appeal to this Court was presented to the Chief Justice of the Supreme Court of Illinois and the appeal allowed by him is January 18, 1937.

IV.

Opinion of the Court Below.

The opinion of the Supreme Court of Illinois in this cause, filed October 27, 1936, is set out in full in the Appendix to this Statement. The opinion is reported in 364 Ill. 547, 5 N. E. (2d) 84 (R. 288-297).

V.

Nature of the Case and Rulings Below.

The nature of the case and the rulings below which are deemed to bring the case within the jurisdictional provision relied on are as follows:

By an Illinois Statute, effective May 19, 1926, and popularly known as the Miller Act [Cahill's Ill. Rev. Stat. 1927, Chap. 122, Pars. 269 (1), 269 (2); Smith-Hurd Ill. Rev. Stat. 1927, Chap. 122, Pars. 614 (a), 614 (b); also set forth in full R. 71, folio 68] provision was made for the compulsory retirement of teachers and principals in the Illinois Public Schools in cities having 250,000 or more inhabitants. Section 1 of the Miller Act provided:

> SEC. 1. "* * * the Board of Education of such city shall retire from active service * * * all teachers, principals, * * * in the public schools of such city in accordance with the following schedule:" (R. 71, folio 68).

The schedule provided for the retirement of such persons in the year 1926 at age 75 or older; in 1927, at age 74 or older; in 1928, at age 73 or older; in 1929, at age 72 or older; and in 1930 and thereafter at age 70 or older (R. 68).

Section 2 of the Miller Act provided:

> SEC. 2. "Each person so retired from active service who served in the public schools of such city for twenty or more years prior to such retirement, shall be paid the sum of fifteen hundred dollars ($1,500.00) annually and for life from the date of such retirement from the money derived from the general tax levy for educational purposes" (R. 71, folio 68).

There then followed in Section 2 certain provisos, the first that any person so retired and receiving the annuity should be subject to call "for consultation and advisory service." The second proviso set forth that nothing in the Act should impair or prejudice any rights of a person thereunder retired to an annuity under other statutory provisions concerning any teacher's pension fund and should not repeal or modify such other statutory provisions (R. 71, folio 68).

By an amendment, effective July 1, 1927 (Laws of Illinois, 1927, p. 722) Section 3 providing for voluntary retirement was added. That section was amended in 1929 omitting the provision in the 1927 Act for voluntary retirement at age 70 and over upon an annuity for life of $1500 and making other slight changes which are not material here. As so amended it provided:

> "* * * all teachers, principals, * * * in the public schools of such city, and whose services * * * in the public schools of such city within the last twenty (20) years prior to retirement under this Act, shall aggregate * * * fifteen (15) years or more, and who have served in the public schools of the United States for twenty-five years or more, and who are sixty-five (65) or more years of age, * * * shall upon their own request, be retired from active service and thereafter be paid annuities for life from the moneys derived from the general tax levy for educational purposes: * * *
>
> Such annuities shall be paid respectively according to the following table of ages and annuities annually:

Age 65 ..... ten hundred dollars ($1,000)
Age 66 ..... eleven hundred dollars ($1,100)
Age 67 ..... twelve hundred dollars ($1,200)
Age 68 ..... thirteen hundred dollars ($1,300)
Age 69 ..... fourteen hundred dollars ($1,400)."
(Cahill Ill. Rev. Stats., 1929, Ch. 122, Par. 269 (3); Smith-Hurd Ill. Rev. Stats., 1929, Ch. 122, Par. 614 (c); R. 93, folio 95.)

The balance of Section 3 contains two provisos, the first of which is not material here. The second contains the same provisions as in Section 2 with respect to advisory service to be rendered by the teacher or principal as well as the provision that payment to be made under this section should be in addition to any other annuity under other Illinois laws for which the recipient should be qualified (R. 94, folio 97).

On July 12, 1935, the Miller Act was amended by the enactment of the statute, the validity of which is here in question. This amended Miller Act is set forth in full under Part II of this Statement. As construed, it reduces the annual payments to retired teachers and principals to the yearly sum of $500.00 and repealed Section 3 of the Miller Act relating to voluntary retirement.

The appellants had been in the employ of the appellee, the Board of Education, as active teachers and principals in the public schools of the City of Chicago (R. 24, 113, 115, 116, 122, 127, 128, 186, 187, 192, 193, folios 4, 5, 144, 146, 148, 153, 158, 159, 248, 249, 254, 255, 256). Prior to July 12, 1935, 162 of appellants had been compulsorily retired on annuities for life of $1,500.00 each (R. 24, 113, 187, folios 4, 5, 145, 249). 651 of the appellants had voluntarily retired on their written requests on annuities for life ranging from $1,000.00 to $1,500.00 each (R. 24, 115, 187, folios 5, 146, 249). The remaining 132 appellants, being fully qualified to voluntarily retire and upon such retirement to receive under the law then in force and effect, annuities "for life" in the

amounts fixed by law in force prior to July 12, 1935, made written requests for such retirement (R. 24, 122, 188, folios 5, 153, 250). These written requests were made in the months of May and June, 1935, and were submitted by the Superintendent of Schools to the Board of Education with the recommendation that each of said 132 appellants be voluntarily retired and receive annuities for life in amounts varying from $1,000.00 to $1,400.00. The reports of the Superintendent of Schools were submitted to the Board of Education at meetings held in June, 1935, but the Board, departing from its uniform custom, postponed action upon the reports indefinitely (R. 97, 98, 99, 100, 101, folios 103, 105, 106, 107, 111, 112). After July 12, 1935, when the repeal of Section 3 of the Miller Act providing for voluntary retirement became effective, the Board of Education took action to compulsorily retire these 132 teachers and principals under the supposed authority of the new Act, upon annuities for life of $500.00 a year each (R. 47, folio 40). The effect of the Amended Miller Act of July 12, 1935, as retroactively construed by the Illinois Supreme Court in this case, has been to reduce the life annuities of the 813 other appellants previously retired to $500 a year.

Twenty of the appellants herein filed a complaint in the Superior Court of Cook County, Illinois, seeking to enjoin the defendant Board of Education and others from reducing the retirement annuities of appellants and to compel defendants to restore to appellants the annuities, which the Illinois Statute in force at the time of their several retirements, provided should be paid to them for the remainder of their respective lives (R. 23, folio 3). The complaint was filed on their behalf and that of others similarly situated, who might choose to join in the cause (R. 23, folio 3). By order of the trial court, the remaining appellants herein, being persons similarly situated, were permitted to intervene as parties plaintiff (R. 113, 186, folios 144, 248).

Origin and Treatment of the Federal Constitutional Questions by the Courts Below.

Appellants, in their complaint, alleged their willingness to render consultation and advisory service and to comply in all respects with the requirements of the Miller Act in effect prior to the 1935 amendments (R. 58, folio 54). They claimed that their compliance with the provisions of this Act and with its prerequisites as to age and length of service had given rise to contractual and quasi-contractual rights to receive for life the retirement allowances provided for by said Act at the time of their respective retirements (R. 58, folio 54). They further alleged that if the amended Miller Act of 1935 were held applicable to them and effective in reducing their annuities to a uniform rate of $500 a year, this Act would be in violation of Section 10, Article I of the Constitution of the United States and of the Fourteenth Amendment to said Constitution and would be invalid (1) as an attempt to take away vested rights and to take property without due process of law, and (2) as an attempt to impair obligations of contracts (R. 62, folios 57, 58).

The Federal constitutional questions raised in the complaint were pressed in argument both in the trial court and before the Supreme Court of Illinois. In dismissing the complaint for want of equity, the trial Judge stated as to the 1935 Amendments:

> "The plaintiffs' contention here is that if this amendment applies to the plaintiffs the amendment is unconstitutional * * * (R. 281, folio 548).
>
> "The Court is going to pass on this case from the main issue involved,—I may say the meat of this controversy.
>
> "I am satisfied that a pension right is not a vested right. It is a creature of the Legislature. I am of the opinion that it can be modified, changed, or altered by the Legislature, and the judgment of the Court will be,

in this injunction suit, that the injunction is denied and the bill dismissed for want of equity'' (R. 282, 283, folios 548, 549).

The Supreme Court of Illinois, in sustaining the validity of the amended Miller Act of 1935, passed squarely upon the Federal constitutional questions. The whole opinion of that court is printed in the Appendix to this Statement. The following excerpts show the court's decision upon this issue:

> ''They (appellants) bring the cause here on the ground that a constitutional question is involved in the construction given the Act by the chancellor (R. 288).
>
> ''Appellants' complaint is bottomed on the proposition that the rights of teachers retiring or entitled to retire prior to the 1935 amendment were fixed and determined by the law in effect at the time of their retirement or written request for retirement and could not be abolished or reduced by subsequent act of the legislature, and that if the 1935 amendment is to be construed as the Superior Court construed it, it is in violation of * * * the Federal constitution * * *, as an attempt to take away vested rights, to take property without due process of law, and to impair obligations of contract * * *'' (R. 290).
>
> ''The decisions of this court have uniformly been that pensions are not based on contract but are mere expectancies based upon anticipated continuance of existing law, and that future installments of pensions are not vested property rights. It follows that the State may reduce future installments of pensions without violating the provisions of the State or Federal constitution'' (R. 292-293).

Appellants' assignments of error to this Court, contained in the petition for appeal, claim the protection of Section 10, Article I of the Constitution of the United States and of the Fourteenth Amendment thereto.

The appellants have, from the inception of this case, raised and relied upon the Federal constitutional issues and these issues have been squarely met and decided by both of the Illinois courts. The judgments appealed from, holding the amended Miller Act of 1935 to be applicable to appellants and valid, could not have been reached without deciding the Federal questions. The case is therefore a proper one for consideration by this Court under Section 237 (a) of the Judicial Code.

The Federal Questions Raised in This Case Are Substantial.

When appellants retired pursuant to the provisions of the original Miller Act, which provided for annuities of from $1,000 to $1,500 per year, their relation with the State was contractual and the statute became a part of their contracts, vesting rights in them which could not later be impaired.

The 651 appellants who voluntarily retired after the enactment of Section 3 of the Miller Act and prior to the amendment of July 12, 1935 were offered and made a definite choice. They were entitled to continue to serve as active teachers or principals, at salaries in excess of the retired pay offered or they were permitted to retire upon life annuities provided by the Act. They chose the latter alternative and this voluntary change in position in response to the offer made by the State constitutes consideration for the contracts on the part of the State, through its agent, the Board of Education, to furnish the promised annuities for life, without impairment.

The same option was granted and the same election was made by the 132 appellants who qualified for voluntary retirement and filed written requests therefor prior to July 12, 1935, on which the defendant Board failed to act. They,

too, accepted the offer contained in Section 3 of the Act as in force at the time of making such written requests and being qualified for such retirement and recommended therefor, had the same rights under that law as did those who were actually voluntarily retired. The withheld Board action was purely ministerial and therefore these appellants are entitled to the same relief as those who had voluntarily retired prior to May, 1935 (R. 278, folio 544).

The 162 appellants who had been compulsorily retired before the amendments of 1935, in reliance on the provisions of the Act for "annuities" "for life" which were held out to them without qualification or reservation, by continuing in the service for the required period and by their retirement under the Act at the stipulated age had become entitled to the continuance of the payment of those annuities as deferred compensation for the full term provided.

The principal questions here presented are:

Did the Illinois Compulsory and Voluntary Retirement Act (the Miller Act) Sections 1 and 2 of which became effective May 19, 1926, and Section 3, July 1, 1927, enter into and become a part of the several contracts of appellants? If so, it seems to follow that there has been an impairment of the obligation under these contracts by the statute here complained of, which became effective July 12, 1935.

Did the appellants who before the 1935 amendments complied with all the provisions of that Act for compulsory or voluntary retirement and retired, or were fully qualified and sought retirement thereunder, become entitled to vested rights thereunder to the annuities therein provided for, for life as therein specified, of which rights they could not be deprived without the taking of property without due process of law?

This Court has inferentially held that the right of a police pensioner or his beneficiary became fixed and vested upon the happening of the particular event of death or retire-

ment. *Pennie* v. *Reis,* 132 U. S. 464. That case has been so interpreted by Dillon on "Municipal Corporations", (5th Ed.) Sections 430, 431; and by *Kavanagh* v. *Board of Police Commissioners,* 134 Calif. 50, 66 Pac. 36; *Roddy* v. *Valentine,* 268 New York 228, 197 N. E. 260; *City of Dallas* v. *Trammell* (Court of Civil Appeals, Texas) 96 S. W. (2d) 110.

This Court pointed out the distinction between gratuitous pensions and vested contract and property rights arising under War Risk insurance policies in the recent case of *Lynch* v. *United States,* 292 U. S. 571, 576-577.

In *Retirement Board* v. *McGovern,* 316 Pa. 161, 174 Atl. 400, the Pennsylvania Court held that retirement annuities were deferred and withheld compensation, saying (p. 169):

> "* * * when the conditions are satisfied, at that time retirement pay becomes a vested right of which the person entitled thereto cannot be deprived; it has ripened into a full contractual obligation. See Lynch *v.* U. S. (U. S. Supreme Court) decided June 4, 1934."

The Supreme Court of Pennsylvania again referred to *Lynch* v. *United States, supra,* stating in a foot-note that that case "described the difference between War Risk Insurance and a pension; the former having the incidents of a contract (as retirement pay does here)" (p. 170).

The *McGovern* case, *supra,* was the only decision involving retirement annuities referred to in the recent case of *Dismuke* v. *United States,* 297 U. S. 167.

The *Dismuke* case involved the Federal Civil Service Retirement Act which provided that the employee under the conditions specified "shall be entitled to an annuity payable from the civil-service retirement and disability fund." This Court held as to this provision:

> "The provision is mandatory, expressed in the terms of the right of the employee, which is inseparable from

> the correlative obligation of the employer, the United States'' (p. 169).

The question was there raised whether the United States District Court had jurisdiction under the Tucker Act which in granting it jurisdiction in certain cases specifically excepted suits for pensions. This Court referred to the fact that the exception was in the Tucker Act which became a law in 1887

> ''at a time when the term 'pensions' commonly referred to the gratuities paid by the Government in recognition of past services in the Army or Navy. The annuities payable under the Retirement Act are not gratuities in that sense'' (p. 170).

This Court then commented upon the fact that the Retirement Act did not refer to the annuities as pensions and held:

> ''We conclude that the annuities payable under the Retirement Act are not pensions within the meaning of the Tucker Act * * *'' (p. 171).

By this decision this Court clearly pointed out the distinction between the old-fashioned pensions granted by Acts of Congress passed after the rendition of service in the Army or Navy and retirement allowances and annuities provided for by an Act in force at the time the services were being rendered and at the time of retirement from service. Such pensions granted after the rendition of services, this Court had held in its early decisions, to be mere gratuities. Retirement annuities, however, under an Act in force at the time the services were being rendered, were held in the *Dismuke* case to give rise ''to a right of the employee'' and a ''correlative obligation of the employer.''

In the case of *Roddy* v. *Valentine*, 268 N. Y. 228, 197 N. E. 260, *supra*, the New York Court of Appeals construed an

Act for retirement of policemen in which they were referred to as "pensioners" and their retirement annuities as "pensions" and held (p. 231):

> "The concept embodied in the word 'pension' has developed far beyond the original idea of a bounty or gratuity, 'springing from the appreciation and graciousness of the sovereign', granted in recognition of past services."

As to the police retirement annuities there involved, the New York Court further held (p. 232):

> "Where, however, the statutory conditions for retirement existing when application is made have been met and the award of the pension or benefit has been made, or as of right should have been made * * * the interest becomes vested and takes on the attributes of a contract, which in the absence of statutory reservations, may not legally be diminished or otherwise adversely affected by subsequent legislation. (Pennie *v.* Reis, *supra;* * * *"

In a recent Georgia case, a fireman was retired and placed on the pension roll in 1933 at a pension of $100.00 per month. In 1935 the Georgia legislature passed a statute retroactive in terms reducing his pension to $75.00 per month. A petition for mandamus was filed alleging the 1935 Act to be unconstitutional and void as in violation of Section 10 of Article I of the Constitution of the United States. The Supreme Court of Georgia held that the 1935 law was void under the United States Constitution as an attempt to impair the obligation of a contract. *Trotzier* v. *McElroy,* 182 Ga. 719, 186 S. E. 817.

Other State cases holding that retirement annuity statutes similar to the original Miller Act became, from the

time of their passage, a part of the contract of employment or vested under the Statute are:

O'Dea v. *Cook*, 176 Cal. 659, 169 Pac. 366;

State v. *Love*, 89 Neb. 149, 131 N. W. 196, 34 L. R. A. (N. S.) 607, Ann. Cas. 1912 C. 542;

Fellows, Atty. Gen. v. *Connolly*, 193 Mich. 499, 160 N. W. 581;

State ex rel. Stafford v. *State Annuity Board*, 219 Wis. 31, 261 N. W. 718;

Renz v. *Hibbing Firemen's Relief Assn.*, 186 Minn. 370, 243 N. W. 713;

Cobbs v. *Home Insurance Co.*, 18 Ala. App. 206, 91 So. 627 (Petition for Certiorari denied by Supreme Court of Alabama, 91 So. 922);

Byrd v. *Dallas*, 118 Tex. 28, 6 S. W. (2nd) 738;

Lage v. *City of Marshalltown*, 212 Ia. 53, 235 N. W. 761.

Where the contract clause of the Constitution has been properly invoked, this Court will determine for itself the nature and effect of the alleged agreement and whether it has been impaired by subsequent legislation. *Larson* v. *South Dakota*, 278 U. S. 429, 433; *United States Mortgage Co.* v. *Matthews*, 293 U. S. 232.

A contract right is a property right and, as such, is entitled to protection under the Fourteenth Amendment to the Constitution of the United States. *Long Island Water Supply Company* v. *Brooklyn*, 166 U. S. 685.

Appellants have shown that the Federal constitutional questions were raised in their original pleadings, were considered and rejected by both of the Illinois courts which could not have upheld the Act of July 12, 1935 as retroactive and as applicable to appellants without passing upon these questions, and that the point involved is a substantial one. Appellants have met the requirements for a review by this Court under Section 237 (a) of the Judicial Code.

VI.

Cases Believed to Sustain the Jurisdiction.

The following cases are believed to sustain the jurisdiction of this Court:

Ingraham v. *Hanson*, 297 U. S. 378;
Larson v. *South Dakota*, 278 U. S. 429;
Home Building and Loan Assn. v. *Blaisdell*, 290 U. S. 398;
Worthen Company v. *Kavanaugh*, 295 U. S. 56;
Seton Hall College v. *South Orange*, 242 U. S. 100;
Pacific Telephone Co. v. *Tax Commission*, 297 U. S. 403.

We respectfully submit that the Supreme Court of the United States has jurisdiction of this Appeal by virtue of Section 237 (a) of the Judicial Code.

ALLAN J. CARTER,
Attorney for Appellants.

ALFRED R. BATES,
C. T. B. GOODSPEED,
KARL D. LOOS,
PRESTON B. KAVANAGH,
Of Counsel.

APPENDIX.

Opinion of Supreme Court of Illinois—Reported in 364 Ill. 547, 5 N. E. (2nd) 84.

CHESTER C. DODGE *et al., Appellants,*

vs,

THE BOARD OF EDUCATION OF THE CITY OF CHICAGO *et al., Appellees.*

(Opinion Filed October 27, 1936. Rehearing denied December 4, 1936.)

Mr. Justice STONE delivered the opinion of the Court:

Appellants' bill filed in the superior court of Cook county seeking to enjoin appellees, the Board of Education of the City of Chicago and others, from reducing teachers' pensions as applied to them, was dismissed for want of equity. They bring the cause here on the ground that a constitutional question is involved in the construction given the act by the chancellor.

The original complaint was filed by twenty plaintiffs as a class suit on behalf of themselves and all others similarly situated. The Board of Education of the City of Chicago and certain of its officers, and the city of Chicago and certain of its officers, were made defendants. The act which is made the basis of this complaint is commonly known and is hereinafter referred to as the Miller Act. It is an act having to do with teachers' pensions. (Smith-Hurd Stat. 1927, chap. 122, par. 614a, p. 2586.) The complaint of appellants is, that by the revision of that act in 1935 vested rights of those teachers who had retired, or sought to do so, prior to the enactment of such revision were taken away. These appellants all have either retired or sought to retire before the 1935 amendment of the Miller act. The only provision of that amendment here attacked has to do with the reduction of pensions provided by the act.

This act was originally passed in 1926 and entitled, "An act to provide for the compulsory retirement of teachers,

etc., and the payment of retirement annuities." The act provides a pension in addition to that provided by the Teachers' Pension act of 1909. As originally enacted the Teachers' Pension act provided for voluntary retirement of teachers. The Miller act provided for compulsory retirement of teachers at the age of seventy and for the payment of retirement annuities of $1500 per annum. This was a separate act and in nowise affected the Teachers' Pension law, which provided a pension of $1000 per year on voluntary retirement. The additional annuities under the Miller act are paid solely out of funds raised by taxation. Teachers contribute nothing toward that fund. In 1927 the Miller act was amended to fix, by section 3, the annuities on a sliding scale from $1000 to $1500 to teachers voluntarily retiring between the ages of sixty-five and seventy. This, to teachers retiring under seventy, was a reduction from the flat amount of $1500 given by the original act. By the amendment effective on July 12, 1935, the title of the act was amended to read as follows: "An act to amend sections 1 and 2 and the title of 'An act to provide for the compulsory and voluntary retirement of teachers, principals, district superintendents, and assistant superintendents, and for the voluntary retirement of superintendents of schools and members of the board of examiners, and for the payment of retirement annuities,' approved May 19, 1926, as subsequently amended, and to repeal section 3 of said act." (Laws of 1935, p. 1378.) This amended act abolished the provisions for voluntary retirement and fixed the compulsory retirement age at sixty-five years. The annuities were reduced to a flat rate of $500 annually. A very large number of former teachers have joined in this proceeding, as did some who sought to retire in May and June, 1935, under the Miller act before the enactment of the 1935 amendment.

Appellants' complaint is bottomed on the proposition that the rights of teachers retiring or entitled to retire prior to the 1935 amendment were fixed and determined by the law in effect at the time of their retirement or written request for retirement and could not be abolished or reduced by subsequent act of the legislature, and that if the 1935 amendment is to be construed as the superior court

construed it, it is in violation of section 2 of article 14 of the constitution of Illinois and the fifth amendment of the Federal constitution and in violation of section 10 of article 1 of that constitution, as an attempt to take away vested rights, to take property without due process of law, and to impair obligations of contracts. The prayer of the bill is, that the board and its appropriate officers be required to take the necessary action to permit requests for voluntary retirement under the law in force at the time the requests were made for such, and that it take such action as necessary to restore the annuities then in force. The city of Chicago filed a motion to dismiss the complaint on the ground of want of equity. The board of education answered denying complainants' right to the relief sought. Many teachers and former teachers intervened.

As is stated by counsel for appellants in their reply brief, "appellants' case rests upon the proposition that they have vested property rights to the payment of future installments of the annuities on the basis fixed by the law in force at the time they retired, or being entitled to retire, made application for retirement." This question will be first considered. They cite *DeWolf* v. *Bowley,* 355 Ill. 530, *Porter* v. *Loehr,* 332 id. 353, *Beutel* v. *Foreman,* 288 id. 106, *People* v. *Abbott,* 274 id. 380, *Hughes* v. *Traeger,* 264 id. 612, and *Pennie* v. *Reis,* 132 U. S. 464, 33 L. Ed. 426, in support of this claim.

The case of *DeWolf* v. *Bowley, supra,* did not involve the question of vested property rights but announced the oft-repeated doctrine under which pensions to retired officers are sustained—i. e., that a public benefit accrued in two ways: by encouraging such officers or employees to remain in the service, and by retiring from public service those who have become incapacitated from performing the duties as well as they might be performed by younger or more vigorous persons. The opinion in that case reviews decisions of this and other courts.

Porter v. *Loehr, supra,* concerned an amendment to the Police Pension act which increased the pension of retired police officers and applied such increased pensions to those who had retired under the previous act. The act was held

unconstitutional for the reason that the increase of pensions to retired policemen did not contemplate the rendition of any additional service by the pensioners and the amount of their pensions was fixed by law when they retired and had their sole basis in services rendered prior to retirement. This was the ground upon which the invalidity of the act was held, and not, as counsel for appellants argue, because of retroactive application of such amendment.

Beutel v. *Foreman, supra,* was a mandamus proceeding to compel the board administering the Police Pension Fund act to grant a pension. Beutel retired after twenty years of service as a member of the police force and filed an application for pension. About three months after filing this application the act was amended, adding the requirement that the retired officer shall also have reached the age of fifty years. Beutel had not reached that age and the board denied his petition. The act prior to the amendment of July, 1917, had no fifty-year requirement. It was argued that Beutel had a vested right in a pension when on March 31, 1917, he retired and made application for such pension, and that the legislature could not take away that right by subsequent legislation imposing another requirement. It was argued that the amendment was unconstitutional as violating the property right vested in him. It was there held that Beutel enjoyed no right which could not be altered by the legislature.

A right, to be within the protection of the constitution, must be a vested right. It must be something more than a mere expectancy based upon an anticipated continuance of an existing law. If before rights become vested in particular individuals the convenience of the State induces amendment or repeal, such individuals have no cause to complain. (*People* v. *Clark*, 283 Ill. 221; 1 Lewis on Stat. Const. (2d ed.) sec. 284.) It was held in the *Beutel* case that municipalities may take away the right to pensions under circumstances shown in that record without affecting the contract right of pensioners or violating the constitution.

Counsel for appellants say that the doctrine of the *Beutel* case is to be applied only to facts on that record, which

showed that no right in the retiring officer had become vested, while here the rights of these retired teachers had become vested before the amendment of 1935. We are unable to see the lack of analogy on the facts. In that case Beutel had complied with the statute as it existed at the time he retired but it was changed before the board acted on his application for pension. The opinion in that case discusses the authorities fully and need not be re-examined here. We adhere to the holding there made. None of the cases cited by counsel for appellants have modified the principles laid down in the *Beutel* case. The decisions of this court have uniformly been that pensions are not based on contract but are mere expectancies based upon anticipated continuance of existing law, and that future installments of pensions are not vested property rights. It follows that the State may reduce future installments of pensions without violating the provisions of the State or Federal Constitution.

Counsel for appellants argue that if an amendment may not be made retroactive to include increased pensions to those who had retired before such increase was authorized, then by the same token the legislature should not be permitted to reduce pensions by the retroactive application of such amendatory statute, and they call attention to what they deem an analogy in logic between this case and *Porter* v. *Loehr, supra.* It will be observed, however, that the basis of the holding in the *Porter* case was not that the amendatory act could not be made retroactive, but the reason for the invalidity of that act as applied to Porter was that an increase of pension to those retiring before such increase was authorized was not in contemplation of services to be rendered nor an inducement to continued service but was a gratuity, and so came within constitutional inhibition.

Appellants' counsel also say that *Miner* v. *Stafford,* 326 Ill. 204, supports their contention that this act should not be construed to be retroactive in its application. In that case petitioner's husband was killed some six months before an amendment to the Pension act increasing pensions to widows of policemen who were killed in service was enacted. It was held that her right to a pension was one

given by the act as it existed at the time the right to receive a pension accrued and not by the amendment. While the opinion refers to the fact that nothing is said in the amendatory act showing an intention to give it retroactive application, yet the basis of the opinion was that her right to a pension arose before the amendment was enacted. As is pointed out in *Porter* v. *Loehr,* supra, to give a pension act of that character retroactive effect would be to violate the constitutional prohibition against donation of public funds for private interests. In this case the 1935 amendment of the Miller act by specific reference repealed section 3, which fixed the amount of the retirement annuities, leaving nothing in the act other than the provision for $500 per annum to authorize the payment of those annuities. It would be difficult to conceive of stronger evidence of legislative intent to make the amendment retroactive in its application.

In *Hughes* v. *Traeger, supra,* it was held that a change in the disposition of a fund, a portion of which was contributed from public taxation and a portion from the salaries of employees, does not violate any vested right of those interested therein, since such right, until it accrues, is only in the nature of an expectancy created by law and which the law may revoke or destroy. Counsel argue that this case is authority for their claims of vested right because of the language of the opinion, "until the happening of the event designated by the statute for its distribution he has no vested right in the fund but only an expectancy created by the law," and that in this case the happening of the event designated by the statute was the retirement of teachers under the provisions of the Miller act. The doctrine as we have seen, is thoroughly established in this State that the State may control the giving or taking away of pensions, and, in consideration of such expressions as "happening of contingency," this doctrine must be borne in mind. If there became due to any of these appellants any installment under the act prior to the amendment of 1935 which was not paid they would have a cause of action to recover it, for until a statute is amended the processes of the law are afforded those who are beneficiaries under it.

It is not intimated in this case that there are any such unpaid installments.

Pennie v. *Reis, supra,* relied upon by appellants, arose in California. In 1878 a statute was adopted in that State providing that upon death of a police officer after June 1, 1878, there should be paid to his legal representatives, out of a pension fund established by the act, the sum of $1000. The act required contributions to the fund, and provided that in case a policeman resigned he should be re-paid the amounts he had contributed. On March 4, 1889, a new pension law was enacted, providing for the merger of certain pension funds and repealing the statute under the terms of which $1000 was to be paid to a deceased policeman's estate. This amendment occurred just nine days before the death of the policeman whose representatives were seeking the award. It was contended there, as here, that the act of 1889 violated constitutional provisions against the impairment of the obligation of contract and destroyed vested rights. It was held that this was not so. The court there said, that "until the particular event should happen upon which the money or part of it was to be paid there was no vested right in the officer to such payment. His interest in the fund was until then a mere expectancy created by law and liable to be revoked or destroyed by the same authority."

The difference in nature between a lump sum pension or award and a continued pension is obvious and is sufficient to mark the difference in the rule with reference to interest therein as found in the decisions of the courts. Under a statute such as the one in *Pennie* v. *Reis, supra,* where, on the happening of a certain event, a certain sum of money became due, the interest of the beneficiary when such event takes place is analogous to the interest of a pensioner whose installment or pension has become due under the terms of a pension act. *Pennie* v. *Reis, supra,* does not in any way militate against the rule generally adopted, that pension acts do not create in their beneficiaries a vested interest in future installments of the pensions created thereby.

Counsel for appellants seeks to draw a distinction between the payment of a pension and the payment of an

annuity as affecting the question of a vested right therein. The Miller act uses the term "annuity." Counsel say that even though this court has held that pensioners have no vested rights in future installments of pensions, yet there is a sufficient difference between a pension and an annuity to justify their position that appellants have a vested right in such annuity. They say that annuities are in the nature of compensation for services theretofore rendered for which compensation has been withheld. We are unable to see the distinction. The plan of payment is the same, the purposes are evidently the same, and the use of the term "annuity" instead of "pension"—which is but an annuity—does not seem to us to result in the distinction for which counsel for appellants contend. Moreover, it may be observed that counsel's contention that these payments are annuities of compensation withheld for services rendered, if of force, would endanger the entire act, since section 19 of article 4 of the constitution prohibits the granting or authorizing of extra compensation, fee or allowance to any public officer or contractor after service has been rendered or contract made.

Counsel for appellants also argue that under section 4 of the statute on Statutes (Smith-Hurd Stat. 1935, chap. 131, par. 4, p. 3140), the amendment to the Miller act should be construed as retaining provisions for those teachers who retired before the amendment. Section 4 provides that "no new law shall be construed to repeal a former law, as to * * * any right accrued or claim arising under the former law * * * before the new law takes effect." This statute can be of no avail unless the right of appellants to this pension is a vested right. In addition, it may be observed that the Miller act of 1935 is a complete act within itself, revising the old Miller act. There is therefore no room for the application of section 4 of the statute on Statutes.

We are of the opinion that the superior court did not err in dismissing appellants' bill. The decree is therefore affirmed.

Decree affirmed.

BLANK

PAGE:

FILE COPY

Office - Supreme Court, U. S.
FILED
FEB 19 1937
CHARLES ELMORE CROPLEY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936.

No. [redacted] 5

CHESTER C. DODGE, CATHERINE L. BAIRD, AZILE B. REYNOLDS, ET AL.,

Appellants,

vs.

BOARD OF EDUCATION OF THE CITY OF CHICAGO, ET AL.,

Appellees.

BRIEF IN OPPOSITION TO MOTION OF APPELLEES TO DISMISS OR AFFIRM.

ALLAN J. CARTER,
Counsel for Appellants.
189 West Madison Street,
Chicago, Illinois.

ALFRED R. BATES,
C. T. B. GOODSPEED,
KARL D. LOOS,
PRESTON B. KAVANAGH,
Of Counsel.

CHICAGO LAW PRINTING CO., 111 N. WACKER DRIVE (COR. WASHINGTON ST.) TEL. FRANKLIN 6321

BLANK

PAGE

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936.

No. 713

CHESTER C. DODGE, CATHERINE L. BAIRD, AZILE B. REYNOLDS, ET AL.,

Appellants,

vs.

BOARD OF EDUCATION OF THE CITY OF CHICAGO, ET AL.,

Appellees.

BRIEF IN OPPOSITION TO MOTION OF APPELLEES TO DISMISS OR AFFIRM.

The appellees' motion to dismiss or affirm is confined to a statement of legal principles thought to be applicable, unsupported by argument or citations. The points made therein are argued at some length in the appellees' "Statement of Matters and Grounds making against Jurisdiction of the Supreme Court of the United States" and it will accordingly be necessary, in replying to the Motion, to notice the contentions made in that Statement.

The appellees, in opening their statement, press upon this Court certain alleged facts as tending to show the ex-

istence of an economic emergency which required the curtailment of the retirement annuities to which appellants had theretofore been entitled under the Miller Act of May 19, 1926. These are not germane to the constitutional issue. The amended Miller Act of July 12, 1935, which reduced the lifetime annuities of the appellants to $500.00 per year, does not purport to be an emergency economy measure nor is it limited in time and scope to the period of any emergency. It is a matter of common knowledge that by July, 1935 economic conditions had greatly improved.

Many of the assertions made in appellees' "Statement of the Case" are taken from their own allegations made in their answer to the bill of complaint. To this answer a replication (R. 172-186, Folios 230-244) was filed by plaintiffs (appellants) which placed the defendants on strict proof. The case proceeded to trial (R. 196, Folio 263) and testimony on behalf of plaintiffs (appellants) was introduced. The defendants (appellees) offered no testimony in support of their answer and may not now take advantage of its allegations. Such matters as the Reconstruction Finance Corporation loan of $22,500,000, mentioned by appellees, are not included in any portion of the record.

The case before this Court does not involve a test of any emergency powers of the State of Illinois.

The motion to dismiss or affirm, points 1 and 2, suggests that the State courts did not consider the Federal constitutional questions under the Fourteenth Amendment and Section 10 of Article I, but decided the case solely upon a point of local law. These conceptions of the decisions below are based upon the holding of the two Illinois Courts that appellants had no vested or contract rights which could have been impaired by the amended Miller Act of 1935.

It certainly cannot be contended that the Supreme Court of Illinois did not both notice and decide the constitutional questions raised by appellant (Opinion, R. 288, 290, 292-293).

The argument of appellees is substantially to the effect that, while the impairment occasioned by the amended Miller Act of 1935 is plain, the rights impaired were not vested and did not rise to the dignity of contract rights. In order to determine this question it was necessary for the Illinois Court to examine the legal effect of the original Miller Act of 1926 together with Section Three of the Miller Act added by the 1927 Amendment, and the position of appellants who had voluntarily retired, been retired or sought to retire under its provisions. Upon such an examination the Illinois courts upheld the appellees, but such a holding is not binding upon this Court and does not foreclose its inquiry into both the impairment and the nature of the rights impaired, where those rights were created by an earlier State statute and vested by appropriate action taken in reliance upon its provisions. The rule is well stated by Mr. Justice Miller in *New Jersey* vs. *Yard*, 95 U. S. 104, 113-114:

> "It may safely be said that in far the larger number of cases brought to this court under that clause of the Constitution, the question has been as to the existence and nature of the contract, and not the construction of the law which is supposed to impair it; and the greatest trouble we have had on this point has been in regard to what may be called legislative contracts,—contracts found in statute laws of the State, if they existed at all. It has become the established law of this court that a legislative enactment, in the ordinary form of a statute, may contain provisions which, when accepted as the basis of action by individuals or cor-

porations, become contracts between them and the State within the protection of the clause referred to of the Federal Constitution."

The case of *Coolidge* vs. *Long*, 282 U. S. 582, involved subsequent legislation of the State of Massachusetts which it was claimed impaired the obligation of a contract and took property without due process of law in violation of the Federal Constitution. In that case this Court in its opinion delivered by Mr. Justice Butler stated (p. 597):

"* * * this Court is bound to determine for itself whether there is a contract and to ascertain its true meaning and effect. That rule is necessary in order that this Court may properly enforce these provisions of the Constitution."

The most recent instance in which this Court has taken jurisdiction to determine the extent of contract rights created by statute and their impairment by subsequent legislation is in the cases of *Phelps* and *Askam* vs. *Board of Education*, Nos. 454, 455, October Term, 1936, which were argued during the week of February 1, 1937.

Appellees claim that the question is one of local law, not reviewable by this Court. There is no question but that the rights of appellants arose under a state statute. It is our contention that they vested when appellants had complied with all the provisions of the statute and had retired or become entitled to retire thereunder and were impaired by a subsequent Act of the State Legislature. Nevertheless, the construction of the rights claimed is a matter for the independent consideration of this Court. *Appleby* vs. *City of New York*, 271 U. S. 364, 379, 380. In that case this Court held:

"The questions we have here to determine are, first, was there a contract, second, what was its proper

> construction and effect, and, third, was its obligation impaired by subsequent legislation as enforced by the state court? These questions we must answer independently of the conclusion of that court. * * * It makes no difference what the answer to them involves, whether it turns on issues of general or purely local law, we cannot surrender the duty to exercise our own judgment."

Our right to such a consideration and construction inevitably follows from the presence of the constitutional questions which were raised and decided below.

In the alternative, appellees' motion to dismiss or affirm suggests the absence of a substantial Federal question and that such question (if present) has already been ruled upon by this Court (Alternative points 1 and 2).

Both contentions apparently rely upon the argument that appellants had no vested rights to what the original Miller Act describes as "annuities" "for life" (R. 72, 85).

We have no quarrel with the proposition that mere gratuities may be withdrawn at the will of the legislature, which is, in essence, the legal rule relied upon by appellees and which may be deemed well settled law.

We do contend that such a rule is not applicable here. In 1925 the Board of Education and Superintendent of Schools of Chicago recommended that a retirement age be fixed for teachers and principals at 70, in order to provide for the employment of younger persons (R. 73-77); that such retirement should apply to teachers and principals who, having served their probationary period, were occupying permanent appointments under the laws of the State (R. 76); and that the teachers and principals so retired should be compensated at the rate of $1500.00 per year for life by means of a "service annuity" (R. 75,

Folio 70). At the time the Miller Act was originally enacted, Section 138 of the school laws of Illinois applicable to the City of Chicago provided after a probationary period of three years that

> "appointments of teachers and principals shall become permanent, * * * subject to removal for cause."

This provision was enacted in 1917 and was not changed until the 1935 Legislature, by an amendment effective July 12, 1935, provided that such tenure shall also be "subject to termination by compulsory retirement at the age of 65 years" that age having been fixed by the Amended Miller Act as the age for compulsory retirement (R. 26, Folios 7 and 8, Ill. State Bar Stats. 1935, Chap. 122, par. 162, Sec. 138).

Pursuant to this recommendation the Legislature passed the Miller Act, effective May 19, 1926, entitled *"An Act to provide for the Compulsory Retirement of Teachers, Principals, District Superintendents and Assistant Superintendents, and the payment of retirement annuities"* (R. 71). This was amended June 24, 1927 to provide also for voluntary retirement beginning at age 65 (R. 84-86). By the Miller Act and its amendment the legislature intended to and did deprive a large number of appellants of their permanent teaching positions and in lieu thereof granted them in specific terms "annuities for life". Under this Act, 162 of appellants were compulsorily retired; 651 of appellants voluntarily retired upon their written requests for annuities; and the remaining 132 appellants, being qualified under the Act, filed their written requests for retirement, and were recommended for retirement by the Superintendent of Schools.

We submit that the Miller Act contained provisions which, when accepted as the basis of action by these teachers and principals, constituted contracts between them

and the State, within the protection of the contract clause of the Federal Constitution.

Appellees refer to an Illinois teachers pension Act of 1909 as being the only one which confers vested rights because, under it, contributions were made by the teachers to finance their own retirement.

This point is raised here for the first time. Not having been mentioned in the Courts below, it was not a consideration in their decision. If it is a vital element in the question of a contract right, this Court should pass upon it. We submit that the point lacks force because under the Miller Act the teachers renounced a lifetime guaranty of salary in the higher brackets paid to active teachers in exchange for a guaranteed life-long annuity at a fixed level very much lower. This change of position by the teachers constitutes sufficient consideration for their contract. *Schofield* vs. *Zion's Co-operative,* 85 Utah 281, 39 Pac. (2d) 342; *Psutka* vs. *Michigan Alkali Co.,* 274 Mich. 318, 264 N. W. 385; and see the language of the Court with respect to judges in *Retirement Board* vs. *McGovern,* 316 Pa. 161, 170, 174 Atl. 400, p. 405.

The applicable principle is thus stated in *Williston on Contracts* (1920), Vol. 1, Section 65, Page 115:

> "An offer for a unilateral contract generally requires an act on the part of the offeree to make a binding contract. This act is consideration for the promise contained in the offer and doing it with intent to accept without more will create a contract."

Applying this principle here, the State was the promisor and has received a legal benefit in the "long and faithful service" of these teachers and the teachers in turn have suffered a legal detriment in that, depending on the

promise of the annuity at the attainment of the required age and years of service, they gave up seeking employment elsewhere which might have been at higher active salaries. Those who retired voluntarily also gave up the right to continue teaching at the salaries they had then attained to. This constitutes valid consideration for the State's promise.

The Supreme Court of Illinois in the case of *Porter* vs. *Loehr*, 332 Ill. 353, p. 359, 163 N. E. 689, p. 691, decided in December, 1928, had held that retirement allowances were properly granted to policemen and that such a system was of benefit to the public "by encouraging competent and faithful employees to remain in the service and refrain from embarking in other vocations," and that this applied only to employees who were in the public service at the time such a pension system was established. That case was relied upon and approved by the Illinois Supreme Court in its decision in the case of *DeWolf* vs. *Bowley*, 355 Ill. 530, 189 N. E. 893, decided in 1934 sustaining retirement allowances to judges which were claimed in that case to be invalid under the State Constitution as the appropriation of public money to private use and as the allowance of extra compensation to public officers for services already performed.

Appellees quote from the case of *Lynch* vs. *United States*, 292 U. S. 571, page 577, a statement in the decision of this Court that pensions are gratuities. It is clear from the context in the same paragraph from which that quotation is taken that the pensions which the Court referred to were Federal pensions granted to members of the Army and Navy by an Act of Congress enacted after the completion of services. The sentence which immediately precedes the language quoted by appellees is as follows (p. 576):

> "War Risk Insurance, while resembling in benevolent purpose pensions, compensation allowances, hos-

pital and other privileges accorded to *former* members of the army and navy or their dependents, differs from them fundamentally in legal incidents." (Italics ours.)

We submit that the annuities granted by the Miller Act constitute contracts to the same extent that the War Risk policies constitute contracts. Immediately following the language quoted by appellees, this Court held, in the *Lynch* case:

> "On the other hand War Risk policies, being contracts, are property and create vested rights."

It is also our contention that the terms of appellants' contracts for life annuities are to be found in the Miller Act which was in force at the time of their retirements, the Superintendent of Schools having reported to the Board of Education the facts showing that they had in each case complied with all the requirements imposed by the statute, just as in the *Lynch* case the contracts of the veterans were to be found in the statutes providing for the War Risk insurance and also in the policies issued and regulations promulgated thereunder.

Appellees urge that this Court in the *Lynch* case, discussed above, and other cases involving pensions, has passed upon such pensions in a manner which forecloses the claims of the appellants.

The decisions of this Court in *United States* vs. *Teller*, 107 U. S. 64, *Frisbie* vs. *United States*, 157 U. S. 160, and the "pension" cases cited, included in appellees' quotations therefrom, and also those in their quotation from the *Lynch* case, in support of this contention, involve pensions granted by Acts of Congress to veterans of past wars whose services had ended before the passage of the Pension Acts involved. Counsel for appellees are careful to refer to the retirement allowances provided for by the Miller

Act as "pensions" and to the Miller Act itself as a "Pension Law." Nowhere in the Miller Act is the word "pensions" used in referring to the allowances provided by that Act, but those allowances are therein designated as "annuities" and it is therein provided that they should be paid for the "life" of the annuitants, and the amounts are definitely fixed in the Act. As pointed out in our Jurisdictional Statement filed in this case, the distinction between such retirement "annuities" provided for in the Miller Act and the gratuitous "pensions" is brought out by this Court in the recent case of *Dismuke* vs. *United States*, 297 U. S. 167. In that case, this Court held that the "annuities" provided for in the Federal Civil Service Retirement Law were not pensions and were not gratuities in the sense that the pensions paid by the Government "in recognition of past services in the Army or Navy" were gratuities.

Appellees rely upon the powers of a municipal corporation and its immunity as an agent of the State from liability for torts when engaged in performing strictly governmental functions, and cite and quote from three Illinois Supreme Court cases in support of their contention. These cases have nothing to do, we contend, with the power of the legislature to make a binding contract, or with the liability of a State to carry out its contractual obligations.

This Court in the case of *Ettor* vs. *Tacoma*, 228 U. S. 148, states the rule, which we contend applies to the case at bar, in the opinion delivered by Mr. Justice Lurton (p. 154) as follows:

> "The defense of the city that it was but the agent of the State in improving highways of the city, and therefore immune, because the State was immune, vanishes in the face of the fact that the State had abso-

lutely coupled authority in the matter with an obligation to make compensation. The city had no authority save that which came from the very act which imposed an obligation. It would seem to need no argument to establish the contention that the obligation to make compensation to these plaintiffs in error could not be destroyed by subsequent legislation."

The principle above set forth appears to us to also answer the contention of appellees based on the holding of this Court in the cases of *Atkin* vs. *Kansas,* 191 U. S. 207 and *Heim* vs. *McCall,* 239 U. S. 175.

We find nothing in the cases cited by the appellees which, when read in connection with the facts of the particular cases, would prevent this Court from finding the existence in this case of contracts and vested rights and an attempt at impairment of such contracts and such rights. As we have pointed out, the whole purpose of the Miller Act was to take away a right to permanent employment and to give compensation therefor in the shape of a permanent annuity. As to these appellants there was a contract which arose at the time of their retirement and which was impared by the Act of 1935 by which their annuities were reduced to a pittance.

CONCLUSION.

The determination of whether or not appellants possessed vested rights which have been impaired by Act of the Illinois Legislature, involves a substantial Federal question which was properly raised and was decided below. The answer to that question is of vital importance to 945 teachers and principals who are appellants in this cause. We submit that they have brought themselves within the jurisdictional provisions of Section 237 (a) of the Judicial Code and that this Court should hear and determine their claim of violation of their constitutional rights. It follows that the motion to dismiss or affirm should be denied.

Respectfully submitted,

ALLAN J. CARTER,
Counsel for Appellants.

ALFRED R. BATES,
C. T. B. GOODSPEED,
KARL D. LOOS,
PRESTON B. KAVANAGH,
Of Counsel.

BLANK

PAGE

BLANK

PAGE

FILE COPY

Office - Supreme Court, U. S
FILED
MAR 24 1937
CHARLES ELMORE CROPLEY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1936.

No. [redacted] 5

CHESTER C. DODGE, CATHERINE L. BAIRD, AZILE B. REYNOLDS, ET AL.,
Appellants,

vs.

BOARD OF EDUCATION OF THE CITY OF CHICAGO, ET AL.,
Appellees.

Brief for Appellants.

ALLAN J. CARTER,
189 West Madison Street,
Chicago, Illinois,
Counsel for Appellants.

ALFRED R. BATES,
C. T. B. GOODSPEED,
KARL D. LOOS,
PRESTON B. KAVANAGH,
Of Counsel.

CHICAGO LAW PRINTING CO., 111 N. WACKER DRIVE (COR. WASHINGTON ST.) TEL. FRANKLIN 9321

BLANK

PAGE

INDEX.

	PAGE
Opinions Below	1
Statement with Respect to Jurisdiction	1
Statement of Facts	2
Specifications of Error	13
Summary of Argument	15
Argument	21-57
I. This Court has jurisdiction to entertain the appeal	21
II. Where the good faith of a State is involved, any doubts should be resolved in favor of Appellants	27
III. The rights of Appellants to the annuities established by the Miller Act are vested contract rights which may not be infringed by subsequent legislation	29
1. Each Appellant is a party to a contract with the State of Illinois, and that contract became irrevocably binding upon the State upon retirement or attempted retirement	32
The weight of authorities sustain Appellants' position	34
The reasoning of the New York cases	38
The particular kind of consideration is not important when it is apparent that all the elements of a valid contract exist	42
2. The confused state of the law in Illinois as a result of the decision in this case	43
3. Where, as in this case, there is ample consideration for a contract between teacher and state, the presence or absence of teacher contributions is immaterial	52

PAGE

Table of Cases Cited.

Appleby v. City of New York, 271 N. Y. 364 ..... 16, 26
Armstrong v. Board of Education, 247 Ill. App. 584 ..... 5, 15, 17, 23, 30
Baird v. United States, Devereux' Reports & Digests of Opinions of U. S. Court of Claims, p. 88 ..... 17, 35
Bowler v. Nagel, 228 Mich. 434, 200 N. W. 258 ..... 15, 18, 25, 36
Casserly v. City of Oakland, 6 Cal. (2d) 64, 56 Pac. (2d) 237 ..... 18, 36
Cobbs v. Home Insurance Co., 18 Ala. App. 206, 91 So. 627 (Certiorari denied by Supreme Court, 91 So. 922) 16, 18, 25, 37
Coolidge v. Long, 282 U. S. 582 ..... 16, 26
DeWolf v. Bowley, 355 Ill. 530 ..... 19, 20, 43, 49, 51, 54
Dismuke v. United States, 297 U. S. 167 ..... 20, 47
Eddy v. Morgan 216 Ill. 437 ..... 19, 47
Fellows, Attorney General v. Connolly, 193 Mich. 499, 160 N. W. 581 ..... 18, 36
Graef v. Dept. of Health, 227 N. Y. Supp. 82 ..... 17, 33
Head v. Jacobs, 150 Ky. 290, 150 S. W. 349 ..... 16, 19, 25, 37
Holton v. Tampa, 119 Fla. 556, 159 So. 292, 98 A. L. R. 501 ..... 16, 19, 26, 37
Hughes v. Traeger, 264 Ill. 612 ..... 19, 20, 44, 51, 53
Kavanagh v. Board of Police Comrs., 134 Cal. 50, 66 Pac. 36 ..... 17, 18, 34
Klench v. Board of Pension Comrs., 79 Cal. App. 171 ..... 18, 36
Lage v. City of Marshalltown, 212 Ia. 53, 235 N. W. 761 ..... 15, 18, 25, 36
Mahon v. Board of Education, 171 N. Y. 263 49
Matter of Mahon v. Board of Education, 68 N. Y. App. Div. 154 ..... 18, 19, 36, 40, 42, 49
McCann v. Retirement Board, 331 Ill. 193 ..... 19, 47
Mead v. Acton, 139 Mass. 341 ..... 15, 18, 25, 36, 49

PAGE

TABLE OF CASES CITED.

Mell v. State, 130 Oh. St. 306, 199 N. E. 72 ..... 16, 19, 25, 37
Meriwether v. Garrett, 102 U. S. 472 ..... 16, 27
Miner v. Stafford, 326 Ill. 204 (reversing 239 Ill. App. 346) 20, 48, 51
New Jersey v. Yard, 95 U. S. 104 ..... 16, 17, 26, 32.
O'Dea v. Cook, 176 Cal. 659, 169 Pac. 366 ..... 15, 18, 25, 36
Pease v. Peck, 18 How. 595 ..... 20, 52
Pecoy v. Chicago, 265 Ill. 78 ..... 19, 47
Pennie v. Reis, 132 U. S. 464 ..... 16, 17, 20, 26, 34, 35, 44, 53
People v. Abbott, 274 Ill. 380 ..... 19, 20, 45, 49, 51, 54
People, ex rel. Fuesman v. City of Chicago, 278 Ill. 318 3
People v. Hanson, 330 Ill. 79 ..... 19, 47
People v. Partridge, 172 N. Y. 305 49
People v. Retirement Board, 326 Ill. 579 ..... 19, 47
Porter v. Loehr, 332 Ill. 353 ..... 15, 19, 24, 37, 43, 49, 51
Psutka v. Michigan Alkali Co., 274 Mich. 318, 264 N. W. 385 ..... 20, 54
Renz v. Hibbing Fireman's Relief Ass'n, 186 Minn. 370, 243 N. W. 713 ..... 15, 18, 25, 36
Retirement Board v. McGovern, 316 Pa. 161, 174 Atl. 400 ..... 15, 18, 25, 36
Roddy v. Valentine, 268 N. Y. 228, 197 N. E. 260 ..... 15, 18, 19, 20, 25, 26, 36, 38, 43, 53
Ryan v. Foreman, 262 Ill. 175 ..... 19, 47
Schofield v. Zion's Co-operative, 85 Utah 281, 39 Pac. (2d) 342 ..... 20, 54
Stanswsky v. Industrial Commission, 344 Ill. 436 48
State, ex rel. Gorczyca v. City of Minneapolis, 174 Minn. 594, 219 N. W. 924 ..... 18, 36
State v. Love, 89 Neb. 149, 131 N. W. 196, 34 L. R. A. (2d) 607 Ann. Cas. 1912 C. 542 ..... 16, 18, 25, 36, 43, 46

PAGE

Table of Cases Cited.

State, ex rel. Stafford v. State Annuity Board, 219 Wis. 31, 261 N. W. 718 ..... 15, 18, 25, 36

Stiles v. Retirement Board, 281 Ill. 636 ..... 19, 47

Trammell v. City of Dallas, Supreme Court of Texas Decided Feb. 10, 1937—not yet reported 16, 19, 26, 37

Trotzier v. McElroy, 182 Ga. 719, 186 S. E. 817 ..... 15, 18, 25, 36, 37

Woodruff v. Trapnall, 10 How. 190 ..... 16, 27

Table of Statutes Cited.

Act of the Illinois Legislature effective May 19, 1926 (Cahill's Ill. Rev. Stat. 1927, Chap. 122, pars. 269 (1), 269 (2); Smith Hurd Ill. Rev. Stat. 1927, Chap. 122, Pars. 614 (a) and 614(b) Sections 1 and 2 ..... 17, 28, 30

Act of the Illinois Legislature effective July 1, 1927 (Laws of Illinois, 1927, p. 722) Section 3 17

Act of the Illinois Legislature effective July 1, 1929 7

Act of the Illinois Legislature effective July 12, 1935 (Laws of Illinois, 1935, p. 1378) Sections 1, 2 and 3 ..... 17, 28

Otis Amendments to School Law, 1917 Session Laws 15, 17, 22, 30

Constitution of the United States, Article I, section 10 21

Constitution of the United States, 14th Amendment 21

Judicial Code, Section 237a (28 U. S. C. 344) 16, 27

Constitution of Illinois, Section 19, Article IV 15, 19, 24, 37, 45, 47

PAGE

TABLE OF OTHER AUTHORITIES CITED.

Dillon on Municipal Corporations, 5th Ed. secs. 105, 430, 431 ..... 17, 20, 34, 35, 44, 49, 53

Gray on Limitations of Taxing Power and Public Indebtedness 49

Report of Illinois Pension Laws Commission of 1916, pps. 22, 23, 24, 30, 32, 49, 50, 274, 282 ..... 20, 54-56

APPENDIX.

Otis Amendments (Secs. 138 and 161) relating to Board of Education of Chicago, 1917 59

Original Miller Act, May 19, 1926 62

Amendment of 1927 to Miller Act 64

Section 3 of Miller Act as amended in 1929 66

Amended Miller Act, effective July 12, 1935 68

BLANK

PAGE

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1936.

No. 713

CHESTER C. DODGE, CATHERINE L. BAIRD, AZILE B. REYNOLDS, ET AL.,

Appellants,

vs.

BOARD OF EDUCATION OF THE CITY OF CHICAGO, ET AL.,

Appellees.

Brief for Appellants.

OPINIONS BELOW.

The opinion of the Supreme Court of Illinois, filed October 27, 1936, is reported in 364 Ill. 547, 5 N. E. (2d) 84. The opinion of the Superior Court of Cook County, Illinois, was delivered orally and will be found at R. 259.

STATEMENT WITH RESPECT TO JURISDICTION.

This is a direct appeal from a final judgment of the Supreme Court of Illinois, entered October 27, 1936 (R. 273), pursuant to the opinion of that court filed the same day (R.

265). A jurisdictional statement in accordance with Rule 12 of this Court has been filed. On March 8, 1937, this Court ordered that further consideration of the question of jurisdiction should be postponed to the hearing of the case upon the merits. In view of this fact, Point I of the argument herein has been devoted to the question of jurisdiction.

STATEMENT OF FACTS.

Appellants are retired teachers and principals in the Chicago public school system, nine hundred forty-five in number. Appellees are the Chicago Board of Education, its members and officers, the City of Chicago, its Mayor, Treasurer, and Comptroller. Appellants attack as unconstitutional and therefore void, an Illinois statute of July 12, 1935, which has been construed and found applicable to them by the highest court of Illinois. As so construed, the act operates to reduce their retirement pay to $500 per year, in lieu of amounts which theretofore ranged from $1,000 to $1,500 per year. Appellants maintain in this Court, and have at all times maintained in the courts below, that this act, in so far as it is applicable to them, impairs previously existing contracts created by an earlier statute of the State of Illinois and deprives them of property without due process of law, all in violation of the Constitution of the United States. A clear understanding of the case requires the statement of certain incidents which preceded the adoption of the statute now under attack.

The school system of Chicago is administered by a Board of Education of eleven members appointed by the Mayor (Ill. State Bar Stats. 1935, chap. 122, par. 152, sec. 128). While the Board of Education was limited and governed in the performance of its duties and its relations with its teachers by a general school law, passed in 1909,

and amended from time to time, no authoritative interpretation of the teacher-Board contractual relation in Chicago occurred until the decision of the Supreme Court of Illinois in the case of *People ex rel. Fursman* v. *City of Chicago,* 278 Ill. 318. There the Supreme Court of Illinois held that the Board might decline to reemploy a teacher at the beginning of any school year if—"the applicant is married or unmarried, is of fair complexion or dark, is or is not a member of a trades union, or whether no reason is given for such refusal." (P. 326.) The teacher, in other words, had no guarantee of permanent employment and no assurance against dismissal at the end of any school year.

The *Fursman case* was decided April 19, 1917. On April 20, 1917, a statute amending the general school law was passed and became known as the Otis Amendments. Section 138 of the school law in so far as applicable to tenure of office thereafter reads:

> "* * * after satisfactory service for a probationary period of three years, * * * appointments of teachers and principals shall become permanent, subject to the rules of the board concerning conduct and efficiency, and subject to removal for cause in the manner provided by section 161 of this Act * * *."

Section 161 of the Otis Amendments, referred to in the foregoing quotation, provided that after service for a three year probationary period, no teacher or principal shall

> "be removed except for cause, * * * upon written charges presented by the superintendent of schools, to be heard by the board, * * * after thirty days' notice, with copy of the charges, is served upon the person against whom they are preferred, * * *"

These sections of the Otis Amendments are printed in the Appendix, page 59.

Section 138 was amended in July, 1935, by inserting a clause that the tenure therein provided for should be "subject to termination by compulsory retirement at the age of sixty-five years."

On April 8, 1925, the Superintendent of Schools of Chicago recommended to the Board of Education that efforts be made to secure the enactment of a law providing for compulsory retirement of teachers at age 70 and for the payment to them thereafter of the sum of $1,500 per year for life. The reasons advanced by the Superintendent in support of his recommendation were that under the Tenure of Office Act teachers had continued in service beyond the age of efficiency; that many had passed 70 and had not retained the physical and mental vigor necessary for the proper discharge of their duties, and should therefore be replaced by younger persons (R. 51). This report, to which was attached a draft of a proposed retirement law, was unanimously approved by the Board (R. 53).

Subsequent to this recommendation and the action of the Board thereon, an act was introduced in the legislature to provide for teacher retirement. Its final approval was delayed until May 19, 1926 (R. 6, 112). As a result of this delay, the Superintendent, on November 25, 1925, made a further report to the Board, recommending an amendment to its rules. The amendment recited in a preamble that teachers were entitled under the laws of the state to permanent teaching appointments after a probationary period of three years, subject to removal for cause; that it was generally recognized that a letting down of vigor and mental initiative and ambition usually occurs about the age 70; but that experienced teachers after long and faithful serv-

ice were still of value to the schools. The amendment to the rules of the Board then went on to create a new status for teachers, known as "Emeritus Service," which was virtual retirement subject to call at a sliding rate of compensation of from $1,500 to $2,500 per year. The proposal of the Superintendent to establish an Emeritus Service by means of a change in the rules of the Board was adopted by the Board on December 9, 1925 (R. 56).

In February, 1928, the rules of the Board relating to Emeritus Service were held invalid by the Appellate Court of Illinois, First District, in the case of *Armstrong* v. *City of Chicago,* 247 Ill. App. 584. This was an injunction proceeding to restrain the transfer of certain Chicago teachers to an emeritus status against their will and, as they urged, contrary to their rights under the Tenure law of the state. The court denied the right of the Board to terminate the employment of teachers in this manner, and directed the entry of a decree reinstating them in their previous positions. The opinion held, page 593, that the purpose of the Otis Amendments of 1917 was to secure for teachers and principals a permanency in the tenure of their positions and to eliminate the necessity for the making of yearly contracts after the probationary period. This decision was not appealed, was final, and is the last case upon the subject in Illinois.

While the *Armstrong case* was pending in the courts, the statute known as the Miller Act of May 19, 1926, went into effect, entitled "An Act to provide for the compulsory retirement of teachers, principals, district superintendents, and assistant superintendents, and the payment of retirement annuities."

Its provisions are set forth in full in the Appendix pages 62-63. Briefly, it applied to cities having a population

of over 250,000 and provided for the compulsory retirement, upon compensation, after 20 years' service of $1,500 "annually and for life from the date of such retirement from the money derived from the general tax levy for educational purposes," of all teachers, principals, district superintendents, and assistant superintendents, who were—

In 1926, 75 years or more of age;
In 1927, 74 years or more of age;
In 1928, 73 years or more of age;
In 1929, 72 years or more of age;
In 1930, 70 years or more of age;

subject to call for consultation and advisory service and without impairment of their rights under any other retirement fund provisions.

Sections 1 and 2 of the Miller Act, containing the foregoing provisions, remained in full force and effect without change from May 19, 1926, its effective date, until the 1935 amendment went into effect on July 12, 1935.

On March 9, 1927, the Chicago Superintendent of Schools recommended to his Board an amendment to the Miller retirement act of 1926 to provide also for voluntary retirement at an earlier age than the compulsory retirement at 70 years. He suggested that such a provision would give the schools relief from incapacitated teachers over 60 without additional cost, as new teachers taking the place of those retiring would begin at a lower salary scale (R. 64, 65).

On May 11, 1927, the Board approved a recommendation to employ a firm of actuaries to investigate all phases of the proposed voluntary retirement amendment to the Miller act. Such an actuarial report was received and accepted by the Board on May 25, 1927, based upon voluntary retirement at ages 65 to 70. This report considered the several financial factors involved, including gains to

be derived by replacing maximum salaried teachers with those in lower brackets and losses due to the commencement of annuities at an earlier date than previously contemplated. The conclusion was that the items would tend to offset and that net gain or loss would probably not be a material factor. The actuarial study showed that the passage of the Miller act had tended to decrease retirements between 60 and 70 years of age and that the average length of service had increased as a result. Prior to the Miller act, the average service was 31.6 years and the average age of retirement about 57. After the act the average service lasted 34.2 years and the average age of retirement was about 60 (R. 70).

The amendment to the Miller act became a law on July 1, 1927, as section 3 thereof, and permitted voluntary retirement upon annuities for life of the following amounts at the following ages:

65	$1,000
66	$1,100
67	$1,200
68	$1,300
69	$1,400
70 and thereafter	$1,500

The amendment also carried a provision for compulsory retirement at age 65 or thereafter as the result of incapacity revealed by a mental or physical examination of a teacher, which the Board was given power to order.

Section 3 of the Miller Act was amended in 1929 in regard to the service period and by eliminating voluntary retirements at age 70 and over and except as so amended remained unchanged from July 1, 1927, its effective date, until it was repealed by the 1935 amendment which became effective July 12, 1935.

The complete text of the 1927 amendment and of the 1929 amendment thereto appear in the Appendix, pages 64, 66. They did not affect the compulsory retirement provisions of the act.

One hundred sixty-two of the appellants were retired under the compulsory provisions of the Miller act of 1926 at annuities of $1,500 per year for life (R. 2, 91 to 92, 165). The allegations of the complaint and admissions of the answer show that these individuals retired at various times, as they reached retirement age, throughout the time the Miller act was in effect. The specific instances established by the record show retirements throughout the period February 1, 1927 to August 1, 1934, at the ages applicable to the respective dates (R. 13-16).

Six hundred fifty-one appellants voluntarily retired under section 3 of the Miller act, passed in 1927, and received annuities for life ranging from $1,000 to $1,500 per year. The several ages of retirement, the number at each age, and their respective annuities were (R. 8-20, 93-100, 165-166):

Number of Teachers	*Age*	*Annuity*
246	65	$1,000
91	66	1,100
104	67	1,200
73	68	1,300
90	69	1,400
47	70 and over	1,500
651		

The appellants who retired under both the compulsory and voluntary provisions of the Miller act received the annuities to which they were entitled under the law by reason

of age and length of service, from the dates of retirement until July, 1935 (R. 31, 135).

The remaining 132 appellants were fully qualified to voluntarily retire and receive the annuities under section 3 and had made written requests to be retired (R. 22, 24, 25, 101-105, 166-170). These requests were filed in the months of May and June, 1935, and were submitted to the Board of Education at meetings held in June, 1935, by the Superintendent, with his recommendation for approval, which showed that each applicant had met the tests laid down for voluntary retirement by the Miller act. The Board, contrary to its uniform custom, postponed action indefinitely upon the requests for retirement (R. 79, 80).

The Miller act was drastically amended by the Illinois legislature by a law effective July 12, 1935. Section 3 relating to voluntary retirement was repealed, the compulsory retirement age was reduced from 70 to 65, and the amount of the retirement annuities was cut to $500 per year to be paid annually for life. The full text appears in the Appendix at pages 68-69. It will be seen that the act appears to read only prospectively and to apply only to teachers retired after its passage. Upon the passage of the 1935 act, the Board of Education took action to retire under its provisions the 132 appellants, who had sought retirement under the Miller act. Thereafter, the only sums received by any of the appellants, no matter when retired, were at the rate of $500 per year. Formal demands and protests were made by the appellants, claiming the balance of the annuities due them, but without success (R. 32-33).

Twenty of the appellants, including representatives of those who had been retired under the compulsory provisions of the original act, those retiring voluntarily, and those who had sought to retire in May and June, 1935,

filed the present action in the Superior Court of Cook County, Illinois (R. 1). By their complaint they sought to enjoin the Board of Education and others from reducing their retirement annuities and to compel the restoration and payment to them of the amounts which the Miller act in effect prior to July 12, 1935 provided should be paid for the remainder of their respective lives. The complaint was filed on their behalf and that of others similarly situated, who might choose to join in the cause. By order of the trial court the remaining appellants herein, being persons similarly situated, were permitted to intervene as parties plaintiff (R. 90, 164).

Appellants, in their complaint, alleged their willingness to render consultation and advisory service and to comply in all respects with the requirements of the Miller act in effect prior to the 1935 amendment. They claimed that their compliance with the provisions of this act and with its prerequisites as to age and length of service had given rise to contractual and quasi-contractual rights to receive for life the retirement allowances provided for by that act at the time of their respective retirements. They further alleged that if the 1935 amendment was held applicable to them and effective in reducing their annuities to a uniform rate of $500 per year, such act would be in violation of section 10, Article I of the Constitution of the United States and of the Fourteenth Amendment to the Constitution, and would be invalid as an attempt to take away vested rights and to take property without due process of law, and as an attempt to impair the obligation of contracts (R. 40).

The defendants, Board of Education, its members and officers, answered the complaint and the case proceeded to hearing. Appellants offered evidence and argument, but

no evidence was offered on behalf of the defendants, who are the appellees in this Court.

The evidence on behalf of appellants showed (R. 184-186) that the annuities which the teachers had received upon their retirement under the Miller act were very much less than the salaries which they had previously received as active teachers and principals; the evidence further showed, with respect to the 132 appellants who had voluntarily sought retirement before the effective date of the 1935 amendment but were in fact retired after the effective date, that the previous invariable rule of the Board of Education was to retire teachers immediately upon their written request and the recommendation of the Superintendent showing that they possessed the necessary qualifications (R. 195-255). It was admitted at the trial by counsel for the appellees that the placing of teachers on the retired list was a mere ministerial act on the part of the Board (R. 256).

The federal constitutional questions raised in the complaint were pressed in argument, both in the trial court and before the Supreme Court of Illinois, as was the proposition that the 1935 amendment was not retroactive but applied only to persons who had not retired or sought retirement prior to its passage. The trial judge dismissed the complaint for want of equity, saying (R. 259-261):

> "The plaintiffs' contention here is that if this amendment applies to the plaintiffs the amendment is unconstitutional. • • •
>
> "The court is going to pass on this case from the main issue involved,—I may say the meat of this controversy.
>
> "I am satisfied that a pension right is not a vested right. It is a creature of the legislature. I am of the

opinion that it can be modified, changed or altered by the legislature and the judgment of the court will be, in this injunction suit, that the injunction is denied and the bill dismissed for want of equity."

The Supreme Court of Illinois held that the 1935 amendments were to be applied retroactively and as applicable to appellants and, in sustaining their validity, passed squarely upon the federal constitutional questions. The following excerpts from the opinion show the court's decision upon this issue (R. 266-269):

"They (appellants) bring the cause here on the ground that a constitutional question is involved in the construction given the act by the chancellor.

* * *

"Appellants' complaint is bottomed on the proposition that the rights of teachers retiring or entitled to retire prior to the 1935 amendment were fixed and determined by the law in effect at the time of their retirement or written request for retirement and could not be abolished or reduced by subsequent act of the legislature, and that if the 1935 amendment is to be construed as the Superior Court construed it, it is in violation of * * * the federal constitution * * *, as an attempt to take away vested rights, to take property without due process of law, and to impair obligations of contracts * * *."

"* * * The decisions of this court have uniformly been that pensions are not based on contract but are mere expectancies based upon anticipated continuance of existing law, and that future installments of pensions are not vested property rights. It follows that the State may reduce future installments of pensions without violating the provisions of the State or Federal constitution."

The Supreme Court of Illinois affirmed the decision of the trial court which dismissed the bill, and a final judgment was entered October 27, 1936. A petition for rehearing was filed and was denied on December 4, 1936. The appeal to this Court was allowed by the Chief Justice of the Supreme Court of Illinois on January 18, 1937.

SPECIFICATIONS OF ERROR.

1. The Supreme Court of Illinois erred in holding that the 1935 Amendments to the Miller Act as applied to Appellants did not violate Section 10 Article I of the constitution of the United States as impairing the obligations of contracts.

2. The Supreme Court of Illinois erred in holding that the 1935 Amendments to the Miller Act as applied to Appellants did not violate the Fourteenth Amendment to the Constitution of the United States as taking property without due process of law.

3. The Supreme Court of Illinois erred in holding that the 1935 Amendments to the Miller Act as applied to Appellants did not deprive Appellants of vested contract rights in violation of Section 10 Article I of the Constitution of the United States.

4. The Supreme Court of Illinois erred in holding that the 1935 Amendments to the Miller Act as applied to Appellants did not deprive Appellants of vested and accrued property rights in violation of the Fourteenth Amendment to the Constitution of the United States.

5. The Supreme Court of Illinois erred in refusing to hold, as contended by Appellants, that as applied to them the 1935 Amendments to the Miller Act were unconsti-

tutional and void in reducing petitioners' annuities because in violation of Section 10 Article I of the Constitution of the United States.

6. The Supreme Court of Illinois erred in refusing to hold, as contended by Appellants, that as applied to them the 1935 amendments to the Miller Act were unconstitutional and void in reducing petitioners' annuities because in violation of the Fourteenth Amendment to the Constitution of the United States.

7. The Supreme Court of Illinois erred in affirming the decision of the trial court dismissing Appellants' complaint for want of equity.

SUMMARY OF ARGUMENT.

I. This Court has jurisdiction to entertain the appeal. Appellants urged in each of the courts below and urge here, that they each have vested contract and property rights which have been impaired by the 1935 Act in violation of Sec. 10 of Art. I of, and the Fourteenth Amendment to, the Constitution of the United States.

Otis Amendments to School Law, Ill. Session Laws, 1917, p. 730;
Sec. 19, Art. IV of the Illinois Constitution;
Armstrong v. *City of Chicago,* 247 Ill. App. 584;
Porter v. *Loehr,* 332 Ill. 353.

Courts of final jurisdiction in eleven states have sustained the rights of annuitants or pensioners, in situations comparable to that of appellants:

Roddy v. *Valentine,* 268 N. Y. 228, 197 N. E. 260;
Trotzier v. *McElroy,* 182 Ga. 719, 186 S. E. 817;
Mead v. *Acton,* 139 Mass. 341;
O'Dea v. *Cook,* 176 Cal. 659, 169 Pac. 366;
Lage v. *City of Marshalltown,* 212 Ia. 53, 235 N. W. 761;
Renz v. *Hibbing Firemen's Relief Assn.,* 186 Minn. 370, 243 N. W. 713;
Bowler v. *Nagel,* 228 Mich. 434, 200 N. W. 258;
Retirement Board v. *McGovern,* 316 Pa. 161, 174 Atl. 400;
State ex rel. Stafford v. *State Annuity Board,* 219 Wis. 31, 261 N. W. 718;

State v. *Love,* 89 Neb. 149, 131 N. W. 196, 34 L. R. A. New Series 607, Anno. Cases 1912 C 542;
Cobbs v. *Home Ins. Co.,* 18 Ala. App. 206, 91 So. 627 (petition for certiorari denied by Supreme Court of Alabama, 91 So. 922).

Courts in four other states have held such annuities may be reduced:

Head v. *Jacobs,* 150 Ky. 290, 150 S. W. 349;
Mell v. *State,* 130 Ohio State 306, 199 N. E. 72;
Holton v. *Tampa,* 119 Fla. 556, 159 So. 292, 98 A. L. R. 501;
Trammell v. *City of Dallas* (Texas Supreme Court (unreported)).

Appellants have vested rights.

Pennie v. *Reis,* 132 U. S. 464.

The question of the existence and validity of the original contract and of its impairment are to be determined by this Court, which is not foreclosed by the decision below.

New Jersey v. *Yard,* 95 U. S. 104, 113-114;
Coolidge v. *Long,* 282 U. S. 582, 597;
Appleby v. *City of New York,* 271 U. S. 364, 379-380.

A substantial Federal question is presented by the issues in this case, and this Court has jurisdiction on direct appeal under Sec. 237a of Judicial Code (29 U. S. C. Sec. 344).

II. Where, as here, the good faith of a state is involved, any doubts should be resolved in favor of Appellants.

A state should make provision for the payment of its debts and for those of its municipalities. Refusal to do so is dishonor.

Woodruff v. *Trapnall,* 10 How. 190, 206, 207;
Meriwether v. *Garrett,* 102 U. S. 472, 520;

Miller Act 1926, Cahill Ill. Rev. Stat. 1927, Ch. 122, Pars. 269(1), 269(2);

Amendment to the Miller Act, July 12, 1935, Laws of Illinois 1935, p. 1378.

III. The rights of Appellants to the annuities established by the Miller Act are vested contract rights which may not be infringed by subsequent legislation.

Such annuities were expressly made "annuities for life."

Otis Amendments to School Law, Session Laws 1917, p. 730;

Armstrong v. *City of Chicago,* 247 Ill. App. 584;

Miller Act May 19, 1926, Cahill Ill. Rev. Stat. 1927, Ch. 122, Pars. 269(1), 269(2).

Miller Act 1927 Amendment, Cahill Ill. Rev. Stat. 1927, Ch. 122, Par. 269(3);

Amendment to the Miller Act, July 12, 1935, Laws of Illinois 1935, p. 1378.

(1) Each Appellant is a party to a contract with the State of Illinois, and that contract became irrevocably binding upon the State upon retirement or attempted retirement.

New Jersey v. *Yard,* 95 U. S. 104;

Graef v. *Department of Health,* 227 N. Y. S. 82.

The weight of authority sustains Appellants' position.

Dillon on Municipal Corporations, 5th Ed., Sec. 431;

Pennie v. *Reis,* 132 U. S. 464;

Kavanagh v. *Police Pension Fund,* 134 Cal. 50, 66 Pac. 36.

Baird v. *United States,* Devereux' Reports & Digests of Opinions of the U. S. Court of Claims, p. 88.

Conflicting views are held in courts of different states as to whether such a statute results in vested rights, with

the courts of eleven states holding that it does and four states holding that it does not.

The following cases hold that similar statutes resulted in vested contractual rights:

Roddy v. *Valentine,* 268 N. Y. 228, 197 N. E. 260;
Matter of Mahon v. *Board of Education,* 68 N. Y. App. Div. 154;
Klench v. *Board of Pension Commissioners,* 79 Cal. App. 171;
Trotzier v. *McElroy,* 182 Ga. 179, 186 S. E. 817;
Mead v. *Acton;* 139 Mass. 341;
Kavanagh v. *Board of Police Commissioners,* 134 Cal. 50, 66 Pac. 36;
O'Dea v. *Cook,* 176 Cal. 659, 169 Pac. 366;
Casserly v. *City of Oakland,* 6 Cal. (2nd) 64, 56 Pac. (2d) 237;
Lage v. *City of Marshalltown,* 212 Ia. 53, 235 N. W. 761;
Renz v. *Hibbing Firemen's Relief Assn.,* 186 Minn. 370, 243 N. W. 713;
State ex rel. Gorczyca v. *City of Minneapolis,* 174 Minn. 594, 219 N. W. 924;
Bowler v. *Nagel,* 228 Mich. 434, 200 N. W. 258;
Fellows, Atty. General v. *Connolly,* 193 Mich. 499, 160 N. W. 581;
Retirement Board v. *McGovern,* 316 Pa. 161, 174 Atl. 400;
State ex rel. Stafford v. *State Annuity Board,* 219 Wis. 31, 261 N. W. 718;
State v. *Love,* 89 Neb. 149, 131 N. W. 196, 34 L. R. A. (N. S.) 607, Anno. Cases 1912 C. 542;
Cobbs v. *Home Ins. Co.,* 18 Ala. App. 206, 91 So. 627 (petition for certiorari denied by Supreme Court of Alabama, 91 So. 922).

A minority of four states reach the opposite result.

Head v. *Jacobs*, 150 Ky. 290, 150 S. W. 349;
Mell v. *State*, 130 Oh. St. 306, 199 N. E. 72;
Holton v. *Tampa*, 119 Fla. 556, 159 So. 292, 98 A. L. R. 501;
Trammell v. *City of Dallas* (Supreme Court of Texas, decided Feb. 10, 1937, not reported).

Two New York cases have held such rights as vested in carefully reasoned opinions.

Roddy v. *Valentine*, 268 N. Y. 228, 197 N. E. 260;
Matter of Mahon v. *Board of Education*, 68 N. Y. App. Div. 154.

2. A confused state of the law of Illinois results from the decision in this case.

Two recent Illinois cases had held pensions were vested.

Porter v. *Loehr*, 332 Ill. 353;
DeWolf v. *Bowley*, 355 Ill. 530.

Earlier cases had reached similar holdings.

Hughes v. *Traeger*, 264 Ill. 612;
People v. *Abbott*, 274 Ill. 380;
Section 19, Article IV of Illinois Constitution.

An earlier line of cases had held pensions to be gratuities:

Eddy v. *Morgan*, 216 Ill. 437;
Ryan v. *Foreman*, 262 Ill. 175;
Pecoy v. *Chicago*, 265 Ill. 78;
Stiles v. *Retirement Board*, 281 Ill. 636;
People v. *Retirement Board*, 326 Ill. 579;
People v. *Hanson*, 330 Ill. 79;
McCann v. *Retirement Board*, 331 Ill. 193.

The holdings in these gratuity cases are in conflict with

Roddy v. *Valentine*, 268 N. Y. 228, 197 N. E. 260;
Dismuke v. *United States*, 297 U. S. 167.

Another Illinois case holding a pension vested was *Miner* v. *Stafford*, 326 Ill. 204.

This Court should apply the rule stated in *Pease* v. *Peck*, 18 How. 595, to re-establish the better reasoned rule in Illinois.

3. Where, as in this case, there is ample consideration for a contract between teacher and state, the presence or absence of teacher contributions is immaterial.

Hughes v. *Traeger*, 264 Ill. 612;
Pennie v. *Reis*, 132 U. S. 464;
Roddy v. *Valentine*, 268 N. Y. 228, 197 N. E. 260;
Dillon on Municipal Corporations, 5th Ed., Secs. 430, 431.

The Illinois courts have not applied any rule requiring contributions.

DeWolf v. *Bowley*, 355 Ill. 530;
People v. *Abbott*, 274 Ill. 380.

Other state courts have held them unnecessary in private pension systems.

Schofield v. *Zion's Co-operative Mercantile Institution*, 85 Utah 281, 39 Pac. (2d) 342, 96 A. L. R. 1083;
Psutka v. *Michigan Alkali Co.*, 274 Mich. 318, 264 N. W. 385.

Non-contributory pensions are reflected in lower active salaries.

Report of Illinois Pension Laws Commission of 1916, pages 282, 22, 24, 30, 32, 49, 273.

ARGUMENT.

I.

THIS COURT HAS JURISDICTION TO ENTERTAIN THE APPEAL.

In view of the order of this Court entered March 8, 1937 postponing further consideration of the question of jurisdiction until the hearing upon the merits, it becomes necessary to re-examine the jurisdictional aspects of this case.

The Federal questions urged are the impairment of contract rights contrary to Sec. 10 of Article I of the Constitution of the United States and the taking of property without due process of law in violation of the Fourteenth Amendment to that Constitution. The property rights are contract rights which had their origin in the Miller Act of 1926 and its 1927 Amendment, providing for annuities for life for all teachers and principals in the Chicago school system when they should reach a certain age and be retired, either voluntarily or by operation of law. These rights vested as to these appellants at the times when they retired under the provisions of the statute or, as to 132 of them, when they sought retirement under the statute and nothing remained to consummate their change of position except a purely ministerial act on the part of the Board of Education of Chicago.

Assuming for the moment the existence of a contract to pay retirement annuities, there can be no question that such contract and the rights which flowed from it were im-

paired by the 1935 amendment to the Miller Act which cut the annuities to the yearly sum of $500.00 for life. This 1935 Amendment was in direct conflict with the rights of Appellants which, if they had become vested upon retirement, are entitled to the protection of the Federal Constitution.

From its inception, the case has proceeded upon the theory that constitutional rights were endangered and infringed. It was so stated in express language in the complaint (R. 40). The issue then raised was squarely met by the trial court in its oral opinion (R. 259-261) and by the Supreme Court of Illinois, 364 Ill. 547 (R. 265-272). There is no doubt upon this record that the Federal question has been properly preserved.

It is important, in determining whether the Federal question is substantial, to note the position of Appellants before and after the passage of the Miller retirement act of 1926, providing for compulsory retirement, and its 1927 amendment providing for voluntary retirement. All of the Appellants were teachers and principals in the Chicago schools, actively engaged in teaching, with long years of service to their credit. They were serving under a school law which had been clarified in 1917 by the passage of the so-called Otis Amendments. These amendments to the law purported to give them permanency of teaching tenure, subject to removal for cause and after trial and hearing. (See the text of the Otis Amendments in the Appendix, pp. 59-61, with respect to tenure and removal.)

The Superintendent of Schools and the Board of Education of Chicago, as well as the teachers, construed the Otis Amendments as giving the teachers permanent positions (R. 54). The Appellate Court of Illinois in the only

case on the subject so held. *Armstrong* v. *City of Chicago*, 247 Ill. App. 584.

While the Appellants were still active in the discharge of their teaching duties, the Miller Act of 1926 was passed and was amended the following year to provide for both compulsory retirement at certain ages between 70 and 75 and voluntary retirement at 65 to 70. This was in response to the recommendation of the Chicago superintendent of schools and Board of Education and constituted an offer to pay an annuity "for life" to each teacher retired under the Act, in lieu of the salaries paid for what were considered permanent teaching positions.

The purpose of the Miller Act was two-fold. It cleared the school system of elderly teachers for whose removal no statutory cause existed, and it stabilized employment by holding out an inducement for continued service in the system by rewarding those who had remained as teachers in Chicago rather than transferring to other school systems which might offer higher pay but not the same ultimate security. It purported to be and was an offer which was accepted by these Appellants at various times between 1926 and 1935. By their acceptance of the offer, they waived what they and the Board of Education and the State considered to be permanent tenure and gave up larger salaries and passed to a retired status, subject to call for advice and consultation. Thus each and every one of appellants radically changed his or her position and emoluments in good faith and upon the strength of the offer contained in the Miller Act. This was the acceptance of an offer to a contract and should lead this Court to consider the validity and binding force of the contract then established.

It will doubtless be suggested by the Appellees in this case that the Miller Act provided no more than an additional gratuity for services rendered by the Appellants in the past. This suggestion is without force and runs directly contrary to the express provisions of Sec. 19 of Article IV of the Constitution of the State of Illinois which forbids future compensation for past services in the following words:

> "The General Assembly shall never grant or authorize extra compensation, fee or allowance to any public officer, agent, servant or contractor, after service has been rendered or a contract made, * * *" .

See the construction of this clause of the Constitution in the case of *Porter* v. *Loehr*, 332 Ill. 353. This Court will not hold that the legislators in enacting the Miller Act violated their own constitution.

Instead of compensation for past services by way of gratuity, it seems clear to us that the annuities for which Appellants qualified under the Miller Act were supported by one or more of the following elements of consideration: (1) They were to insure future satisfactory service in the Chicago schools by teachers already in that employment or who might thereafter enter it; (2) the annuities were promised as consideration for giving up active teaching positions, with greater compensation, in the case of those whom it was thought desirable to replace by younger teachers; (3) the annuities were compensation for services to be rendered by the teachers after the passage of the act, which was withheld until a future but determinable date based upon the age of the teacher.

It may be of interest to the Court to know that the following courts of final jurisdiction in eleven states have

sustained the rights of annuitants or pensioners, in situations comparable to that of appellants in this case, as vested and contractual and beyond the power of any legislative impairment by subsequent legislative action:

Roddy v. *Valentine,* 268 N. Y. 228, 197 N. E. 260;
Trotzier v. *McElroy,* 182 Ga. 719, 186 S. E. 817;
Mead v. *Acton,* 139 Mass. 341;
O'Dea v. *Cook,* 176 Cal. 659, 169 Pac. 366;
Lage v. *City of Marshalltown,* 212 Ia. 53, 235 N. W. 761;
Renz v. *Hobing Firemen's Relief Assn.,* 186 Minn. 370, 243 N. W. 713;
Bowler v. *Nagel,* 228 Mich. 434, 200 N. W. 258;
Retirement Board v. *McGovern,* 316 Pa. 161, 174 Atl. 400;
State ex rel. Stafford v. *State Annuity Board,* 219 Wis. 31, 261 N. W. 718;
State v. *Love,* 89 Neb. 149, 131 N. W. 196, 34 L. R. A. (N. S.) 607, Anno. Cases 1912 C 542;
Cobbs v. *Home Ins. Co.,* 18 Ala. App. 206, 91 So. 627 (petition for certiorari denied by Supreme Court of Alabama, 91 So. 922).

The Courts of last resort in two other states have held such rights to be neither vested nor contractual but gratuities or bounties springing from the graciousness of the sovereign and terminable at will by future legislation:

Head v. *Jacobs,* 150 Ky. 290, 150 S. W. 349;
Mell v. *State,* 130 Ohio State 306, 199 N. E. 72.

The Supreme Court of the State of Florida has held that the rights of such annuitants or pensioners are vested and therefore can not be entirely destroyed but that such vesting does not prevent the reduction by a later law passed

after the vesting if such a reduction is reasonable in amount and does not reduce the pension to a mere nominal amount.

Holton v. *Tampa,* 119 Fla. 556, 159 So. 292, 98 A. L. R. 501.

In the decision of the Supreme Court of Texas in the case of *Trammell* v. *City of Dallas,* not yet reported, it is held that there are contract rights but that they are subject to impairment by future legislation so as to modify any rights granted under laws passed.

The decision of the New York Court of Appeals in *Roddy* v. *Valentine, supra,* and the several holdings of the California Supreme Court, as well as some of the other State courts above listed supporting the vesting of contract rights, are based in part upon the decision of this Court in *Pennie* v. *Reis,* 132 U. S. 464, and the language used by this Court in that case (p. 471):

> "Until the particular event should happen upon which the money, or a part of it, was to be paid, there was no vested right in the officer to such payment."

The law is well settled that where a claim is made to this Court that contract rights established by statute of a state (The Miller Act of 1926 and 1927) have been impaired by subsequent statutory enactment (The 1935 amendments to the Miller Act) the question of the existence and validity of the original contract and of its impairment are to be determined by this Court, which is not foreclosed by the decision below.

New Jersey v. *Yard,* 95 U. S. 104, 113-114;
Coolidge v. *Long,* 282 U. S. 582, 597;
Appleby v. *City of New York,* 271 U. S. 364, 379-380.

There is, we submit, a substantial Federal question properly presented in this case which should engage the attention of the Court and should be decided by it in the exercise of its regular appellate jurisdiction under Sec. 237 (a) of the Judicial Code (29 U. S. C., sec. 344).

The succeeding sections of the argument will deal more at length with the matters suggested but not argued in detail herein.

II.

WHERE AS HERE THE GOOD FAITH OF A STATE IS INVOLVED, ANY DOUBTS SHOULD BE RESOLVED IN FAVOR OF APPELLANTS.

A state can no more impair by legislation the obligation of its own contracts, than it can impair the obligation of the contracts of individuals. We have the right to demand that the action of a sovereign state be characterized by a more scrupulous regard for justice and a higher morality than is to be expected in ordinary transactions between individuals. *Woodruff* v. *Trapnall,* 10 How. 190, 206, 207. It is of the highest importance that a state should make provision not merely for the payment of its own indebtedness but for that of its different municipalities. Refusal to do so is dishonor. *Meriwether* v. *Garrett,* 102 U. S. 472, 520.

This Court expressed sentiments like these many years ago. They are equally true today. If individuals dealing with their government are bound to turn square corners, the obligations involved are co-equal and the government, whether Federal, state or municipal, is bound by the principles of fair dealing when once its word has been passed and accepted.

The parallel between the words of the Miller Act of 1926-1927 and its 1935 amendment is plain and these acts as now

construed by the Illinois courts reflect discredit upon the State.

The 1926 act, under which Appellants claim that their rights have vested, and the 1935 act, which seeks to destroy those rights, read, respectively:

1926 Act	1935 Act
"Each person so retired from active service * * * shall be paid the sum of $1500 *annually and for life* from the date of such retirement."	"Each person so retired from service shall be paid the sum of $500 *annually and for life* from the date of such retirement."

Change the words *for life* in the 1926 act to read *for nine years* and the two acts become harmonious. Leave the words as they were enacted by the legislature and the 1935 Act shows bad faith. The question obviously arises whether the words "for life" in the new statute have any more significance than have been given them in the old statute as construed by the Illinois Supreme Court's decision in this case.

Had the Court below held, as contended by Appellants, that the 1935 amendment was not retroactive in effect and therefore did not apply to persons already retired under the old statute, no such conflict would have arisen. Such a construction would, we contend, not only have been a proper one of the wording of the Act, but would also have avoided any breach of good faith on the part of the State.

It is one thing to talk about legal concepts of consideration or lack of consideration, contracts, gratuities, offers and acceptances, pensions or annuities. It is another thing to try to explain to 945 school teachers that they did

not receive lifetime annuities when they retired from the Chicago schools after many years of service. To them the words of the first act above quoted are plain and can mean only one thing—a solemn covenant that if they performed certain acts, the state would do its promised part as long as they lived. We see no legal reason why they are wrong but if there be any, it should yield to the impelling force of a public policy that must always insist that a state may not deliberately mislead its citizens to their detriment.

This Court, as the one of last resort, may properly reverse the judgment of the court below, both as a matter of law and as a matter of that public policy which underlies all reasonable rules of law. The argument upon the law which follows should demonstrate the soundness of Appellants' contentions that their constitutional rights have been infringed.

III.

THE RIGHTS OF APPELLANTS TO THE ANNUITIES ESTABLISHED BY THE MILLER ACT ARE VESTED CONTRACT RIGHTS WHICH MAY NOT BE INFRINGED BY SUBSEQUENT LEGISLATION.

No authority need be cited for the proposition that an act of a state legislature which reduces an annuity of $1500 per year "for life" to $500 per year "for life", thereby impairs the right of the annuitant to receive $1500 in each remaining year of his life. The act of July 12, 1935 accomplishes this result. Its provisions are printed in full in the appendix to this brief, pages 68-69.

The Appellants have the burden of showing that their rights to receive $1500 per year for life (or other sums ranging from $1000 to $1500, depending upon retirement

age) are bottomed upon valid and binding contracts; and that these contract rights are entitled to the protection afforded in proper cases by the Constitution of the United States, as a last resort and after other means of defense have been exhausted.

The record shows the urgent need felt by the Superintendent of Schools and Board of Education of Chicago for an adequate retirement or pension plan which would clear the system of elderly teachers of long service but with diminished physical and mental vigor (R. 51). The record shows that 70 was considered by these experts in education to be the maximum age beyond which a teacher should not be allowed to teach and that 65 was the age at which teachers should be encouraged to retire voluntarily (R. 64-68); and that room must be made for younger persons in the Chicago Schools with provision for their ultimate security in retirement (R. 65).

Bearing in mind these factors, which seemed of the first importance to the Superintendent and the Board, and bearing in mind also the fact that the teachers were assured by law and court decisions* of permanency in their positions, subject only to removal for cause, the Superintendent and the Board determined upon a plan of action. They drafted and recommended to the legislature and secured the passage of an act which accomplished their purposes (R. 51-53) and was yet attractive enough to appeal to the teachers, to whom their recommendations were broadcast (R. 26, 131).

This act was the Miller Act of May 19, 1926, with its 1927 amendment (Appendix, pages 62, 64). By its terms a

---

*The amendments of 1917 to the general school law, known as the Otis Amendments (See Appendix, page 59, and *Armstrong* v. *City of Chicago*, 247 Ill. App. 584.

teacher might voluntarily retire at ages 65 to 70. Compulsory retirement began at 75 in the first year of the Act and was progressively reduced until in the fifth year and thereafter it became effective at 70. All those who retired at 70 or more were to receive *"$1500 annually and for life from the date of such retirement from the money derived from the general tax levy for educational purposes"* and actually did receive that amount in semi-monthly payments until July, 1935. All who voluntarily retired at 65 and over were to receive $1000 to $1500 as *"annuities for life,"* and did actually receive those amounts in semi-monthly payments until July, 1935. There were other provisions with respect to length of active service prior to retirement and duties of consultation and advisory service to be undertaken by the annuitants upon request.

These 945 appellants looked upon the Miller Act and found it good. Those retired by the compulsory action of the statute accepted the situation and did not protest the loss of permanent teaching positions. The others retired voluntarily or sought so to retire. Details of the different classes with their ages at their respective retirements are shown in the statement of facts, *supra*, page 8. Doubtless, all of the appellants believed, and we think rightly, that the statute offered each of them a solemn and binding contract "for life" which they had accepted.

Whether this Miller Act of 1926 and 1927 offered such a contract as these teachers believed and whether their rights after they had retired under it are secure from later legislative attack is the issue now before this Court.

1. Each appellant is a party to a contract with the State of Illinois, and that contract became irrevocably binding upon the State upon retirement or attempted retirement.

The general rule with respect to the legislative offer and individual acceptance of a contract is tersely stated by Mr. Justice Miller in *New Jersey* v. *Yard*, 95 U. S. 104, 113:

> "It has become the established law of this Court that a legislative enactment, in the ordinary form of a statute, may contain provisions which, when accepted as the basis of action by individuals or corporations, become contracts between them and the State within the protection of the clause referred to of the Federal Constitution."

We need not argue and do not argue that the passage of the Miller Act created a contract or any vested rights. It was no more than an offer requiring an act or change of position on the part of the offeree to make it binding. It was the act of retiring after all the conditions had been fully complied with, while the offer was open and the statute in force, which ripened the offer into a contract. For those 132 appellants who sought to retire but were prevented by the Board of Education, the legal effect is the same since it is admitted in this record that the action of the Board in approving retirement applications was merely ministerial, where as here, the superintendent had certified that the applicant possessed the qualifications to retire (R. 75, 78 and 256).

Each party to the contract reaped a benefit and sustained a detriment which constituted ample consideration. The State obligated itself to pay an annuity which was a claim against all money derived from the general tax levy for educational purposes. The obligation was complete and

unequivocal, since no reservation or right to withdraw, either express or implied, was contained in the statute. The State benefited upon several grounds. It saved a large part of the salaries of teachers drawing maximum amounts earned after long service,—at one stroke it made places for younger lower salaried teachers and eliminated from active teaching the elderly men and women, both of which results were deemed desirable; and it was able to offer all teachers in the system a substantial inducement for long service with a consequent reduction in teacher turn-over.*

The teacher who retired under the Miller Act gave up a permanent teaching position and a salary in most cases largely in excess of the promised annuity. See the testimony of Reynolds, whose teaching salary was $4800 (R. 184); Keen, $4000 (R. 185); Armstrong, $6500 (R. 186); Dodge, $6300 (R. 187). The teacher gained old age security and an annuity for life which provided an income sufficient for frugal living.

A recital of the consideration which actually passed between the State and the appellants should be sufficient to establish the existence of vested contract rights which may not be impaired.

---

*See the statement in *Graef* v. *Department of Health*, 227 N. Y. S. 82, that

> "It may well be that in contemplation of entering public service of this character, the employee considers the outlook of the anticipated pension after proper service as one of the inducements to enter and to persuade him to continue, declining, perhaps, more attractive offers from other sources which might be afforded."

The weight of authority sustains Appellants' position.

The best statement of the whole problem by a recognized authority is that of Judge Dillon in his work on Municipal Corporations, 5th Edition, Sec. 431, where it is said:

> "Until the particular event should happen upon which the money, or a part of it, is to be paid, there is no vested right in the officer to such payment. His interest in the fund is, until then, a mere expectancy created by the law and liable to be revoked or destroyed by the same authority. But when the particular event has happened upon which the money or a part of it is to be paid, the beneficiary of the pension under the pension system acquires, it has been held, a vested right and it is not competent for the legislature or any other authority to deprive him of that vested right. But the existence of a vested right is dependent upon statutory provisions conferring the pension *without qualification and without any reserved right* to terminate it. If the statute reserves the power to the local authorities to discontinue the pension in their discretion, the beneficiary does not acquire a vested right in it."

Dillon cites as authority for his statement regarding vested rights, the cases of *Pennie* v. *Reis,* 132 U. S. 464, and *Kavanagh* v. *Police Pension Fund,* 134 Cal. 50, 66 Pac. 36. In the latter case, the widow of a policeman sued for benefits under an Act in force at the time of the death of her husband but which was later amended. The Court held that the widow's right to recover was absolute, saying, page 52:

> "Respondent's right therefore became vested while the statute under which she claims was in full force,

and it was not competent for the legislature, or any other authority, to deprive her of that vested right. *Pennie* v. *Reis*, 132 U. S. 471."

In *Pennie* v. *Reis*, this Court had under consideration a police pension act in California. The act provided for the payment of a lump sum of $1000 to the estate of any policeman who died while in the service. It was enacted April 1, 1878, and repealed March 4, 1889. Nine days after the repeal, the particular policeman died and his administrator sought to collect the benefit provided by the former act. This Court held (page 471) that the pension fund "was entirely at the disposition of the government, until, by the happening of one of the events stated—the resignation, dismissal, or death of the officer—the right to the specific sum promised became vested in the officer or his representative. * * * Until the particular event should happen upon which the money or a part of it was to be paid, there was no vested right in the officer to such payment. His interest in the fund was, until then, a mere expectancy created by the law, and liable to be revoked or destroyed by the same authority."

Dillon on Municipal Corporations and the majority of states that have passed upon the question, have construed *Pennie* v. *Reis* to hold, at least inferentially, that once the "particular event" has happened upon which the money is to be paid, rights are vested and contractual and may not thereafter be disturbed or impaired by any subsequent act of a state legislature.*

---

*Compare also the early Federal case under the Fifth Amendment of *Baird* v. *United States*, Devereux' Reports and Digests of Opinions of the U. S. Court of Claims, p. 88. Congress on January 17, 1781, had adopted a resolution providing that officers reduced should be enentitled to half pay for life. A commissioned surgeon,

To this effect are the cases of

Roddy v. *Valentine*, 268 N. Y. 228, 197 N. E. 260;
Matter of Mahon v. *Board of Education*, 68 N. Y. App. Div. 154;
Klench v. *Board of Pension Commissioners*, 79 Cal. App. 171;
Trotzier v. *McElroy*, 182 Ga. 719, 186 S. E. 817;
Mead v. *Acton*, 139 Mass. 341;
Kavanagh v. *Board of Police Commissioners*, 134 Cal. 50, 66 Pac. 36;
O'Dea v. *Cook*, 176 Cal. 659, 169 Pac. 366;
Casserly v. *City of Oakland*, 6 Cal. (2nd) 64, 56 Pac. (2d) 237;
Lage v. *City of Marshalltown*, 212 Ia. 53, 235 N. W. 761;
Renz v. *Hibbing Firemen's Relief Assn.*, 186 Minn. 370, 243 N. W. 713;
State ex rel. Gorczyca v. *City of Minneapolis*, 174 Minn. 594, 219 N. W. 924;
Bowler v. *Nagel*, 228 Mich. 434, 200 N. W. 258;
Fellows, Atty. General v. *Connolly*, 193 Mich. 499, 160 N. W. 581;
Retirement Board v. *McGovern*, 316 Pa. 161, 174 Atl. 400;
State ex rel. Stafford v. *State Annuity Board*, 219 Wis. 31, 261 N. W. 718;
State v. *Love*, 89 Neb. 149, 131 N. W. 196, 34 L. R. A. (N. S.) 607, Anno. Cases 1912 C 542;

---

then serving in the United States Army, was so reduced on March 29, 1781. The Court of Claims, held, p. 89, that he became entitled to this half pay

> "as a right founded upon a contract with Congress, which no subsequent legislation by Congress could, upon any principle of justice, or legal reasoning, take away from him."

Cobbs v. *Home Ins. Co.*, 18 Ala. App. 206, 91 So. 627 (petition for certiorari denied by Supreme Court of Alabama, 91 So. 922).

A minority of States have held that such rights as are here involved are neither vested nor contractual, but are gratuities or bounties.

Head v. *Jacobs*, 150 Ky. 290, 150 S. W. 349;
Mell v. *State*, 130 Oh. St. 306, 199 N. E. 72.

Two other states hold that they are vested but may be reduced by the legislature.

Holton v. *Tampa*, 119 Fla. 556, 159 So. 292, 98 A. L. R. 501;
Trammell v. *City of Dallas* (Supreme Court of Texas, decided Feb. 10, 1937, not reported);

The reasoning of the courts of the minority jurisdictions would hardly apply in Illinois where the State has been expressly forbidden by the terms of its Constitution to grant additional compensation for past services (in reality, gratuities). Sec. 19 of Art. IV of the Illinois Constitution, and see also *Porter* v. *Loehr*, 332 Ill. 353, construing the same.

The latest case sustaining a retirement annuity as a vested and contract right is that of *Trotzier* v. *McElroy, et al., Trustees*, 182 Ga. 719, 186 S. E. 817, decided by the Supreme Court of Georgia July 3 and rehearing denied July 17, 1936. Trotzier, a fireman injured in course of duty, had been retired and placed on a pension of $100.00 per month. Thereafter, under a 1935 amendment to the Pension Law, his annuity was reduced to $75.00 a month. The Georgia Supreme Court in its opinion states (page

723) that "the better view of the subject is to treat the city's agreement to pay a pension as a contract based on considerations flowing from both parties and giving the plaintiff in error a vested right which, under art. 1, sec. 10, par. 1 of the Constitution of the United States cannot be impaired." On page 724 of the opinion the court quotes from *Roddy* v. *Valentine, supra,* and then holds, "If it be true that the right arising from the contract becomes vested on the fulfillment of the contingency provided, * * * then it necessarily follows that subsequent legislation, such as the act of 1935, would impair the obligation to pay the pensioner involved in this case."

The reasoning of the New York cases.

We are fortunate in that the Court of Appeals of New York has recently passed upon the question in an authoritative and carefully reasoned opinion. In *Roddy* v. *Valentine,* 268 N. Y. 228, 197 N. E. 260, decided July 11, 1935, the facts were these:

Roddy was retired in 1924 under the police pension provisions of the Charter of Greater New York from the Police Department of that city upon an annual pension. After his retirement, he was employed as Chief of Police of the City of Long Beach, New York. The laws of 1932 added to the civil service law applicable, a new section by which it was provided that the pensions should be suspended during any employment of the pensioner by any municipal corporation or political subdivision of the State of New York. Under this Act the payment of Roddy's pension was suspended for the period he was employed as Chief of Police of Long Beach. He brought suit to recover the amount withheld and secured a judgment which was

unanimously affirmed by the Court of Appeals. The reasoning of the Court follows (pages 231-2):

"The sole question is whether section 32 of the Civil Service Law affects the plaintiff's right to his pension during the time he was employed by the city of Long Beach.

"The concept embodied in the word pension has developed far beyond the original idea of a bounty or gratuity, 'springing from the appreciation and graciousness of the sovereign,' granted in recognition of meritorious past services. One has but to examine the statutes of our own State (e. g., Civil Service Law, arts, 4, 5 and 6; Education Law (Cons. Laws, ch. 16), art. 43-B) to appreciate the extent of the development. Necessarily there has come with that development changed theories relating to the nature of the rights and obligations under pension statutes both of civil servants and of the government. * * * Where the statutory scheme creates a fund wholly or largely out of public moneys, the interest of the member down to the point where there has been compliance with all precedent conditions and the award has been or as of right should have been made, can hardly be deemed contractual. * * * But whatever its legal nature may be, there seems to be no doubt that it is subject to change or even to revocation at the will of the Legislature. (*People ex rel. Devery* v. *Coler*, 173 N. Y. 103; *Pennie* v. *Reis, supra; Matter of Friel*, 101 App. Div. 155; affd., 181 N. Y. 558).

"*Where, however, the statutory conditions for retirement existing when application is made have been met and the award of the pension or benefit has been made, or as of right should have been made,* (*Matter of O'Brien* v. *New York State Teachers' Retirement*

Board, 215 App. Div. 220; affd., 244 N. Y. 530), *the interest becomes vested and takes on the attributes of a contract, which in the absence of statutory reservations, may not legally be diminished or otherwise adversely affected by subsequent legislation.* (*Pennie* v. *Reis, supra; People ex rel. Mulvey* v. *York,* 41 App. Div. 419; *Klench* v. *Board of Pension Fund Comrs.,* 79 Cal. App. 171, and cases therein cited.) All the reasons of policy which underlie and justify pension legislation in general—the efficiency and morale of departmental service, social protection and social justice—support the conclusion of the last cited and many other similar cases and afford adequate ground for the decisions. *We need not strain for a legal classification.*" (Italics ours.)

Of interest also is the early Appellate Division's case of *Matter of Mahon* v. *Board of Education,* 68 N. Y. App. Div. 154 (affirmed 171 N. Y. 263), upon which Dillon relies and which seems to have had a considerable influence upon his reasoning. A teacher's pension act was involved in the *Mahon* case and the question to be decided by the Court was whether teachers who had retired before the Act became effective could be included within its provisions and be entitled to its benefits. This the Court held could not be done and that, as applied to such teachers, the Act was unconstitutional under a constitutional provision against gratuities similar to that in Illinois. The opinion is chiefly interesting because of its suggestion that the annuities provided by the Act were in the nature of compensation for services rendered before retirement and amounted to pay withheld to induce faithful service. The important portion of the opinion follows (page 156):

"Such pension laws, so called, are now quite common, both in State and Federal legislation. These

annuities, after the expiration of the period of active service, are not gratuities, but are in the nature of compensation for the services previously rendered for which full and adequate compensation was not received at the time of the rendition of the services. In other words, it is in effect pay withheld to induce long-continued and faithful service. Such statutes are designed to benefit the public service in two ways: *First*, by encouraging competent and faithful employees to remain in the service and refrain from embarking in other vocations; and, *second*, by retiring from the public service those who, by devoting their best energies for a long period of years to the performance of duties in a public office or employment have, by reason thereof or of advanced age, become incapacitated from performing the duties as well as they might be performed by others more youthful or in greater physical or mental vigor. Provision is thus made for the partial support of such teachers when their retirement without such provision was deemed inequitable, and but for such provision doubtless would not be enforced. These and other considerations will sustain such legislation from successful attack where the Legislature has limited the application of the law to those who are in the public service or employ at the time of its enactment. As to those, however, who have passed out of the public service at a time when no such obligation had been assumed toward them, retroactive legislation of this character becomes obnoxious to the Constitution. In such case the annuity becomes a mere gratuity, the giving of which is prohibited by section 10 of article 8 of the Constitution. (*Matter of Jensen*, 44 App. Div. 509; *Matter of Chapman*, 57 *id.* 583; affd., 168 N. Y. 80.)"

This case has also had a marked effect upon some of the more important Illinois decisions which will be discussed hereafter.

The reasoning of these two New York cases is of such force and authority in a field which has suffered from careless thinking, that they are entitled to far more than their numerical weight. Nothing is said in either of the quotations from them which cannot be applied with equal force to the position of the Appellants in the present case.

The particular kind of consideration is not important when it is apparent that all the elements of a valid contract exist.

In Point I of this Brief three elements, any one of which constituted consideration for a contract, were suggested. They were that the annuities for which appellants qualified were granted (1) to insure future satisfactory service in the Chicago schools by teachers already in that employment or who might thereafter enter it—by the reduction of turnover; (2) to induce the giving up of active teaching positions carrying larger compensation by those whom it was thought desirable to replace by younger teachers; and (3) as compensation for services to be rendered, which compensation was to be withheld until a future but determinable date based upon the age of the teacher.

We have heretofore demonstrated that adequate consideration passed from state to teachers and from teachers to state when appellants retired under the Miller Act. It is not necessary that any one of the theories stated in the preceding paragraph or found elsewhere be adopted to the exclusion of the others. All find support in the facts and the cases. *Matter of Mahon* v. *Board of Education, supra,* suggests the idea that an annuity is really "pay withheld."

Other cases incline toward the change of position theory and the benefits to be derived by stabilizing employment. It is pointed out in the Nebraska case, *State* v. *Love, supra,* that the service period before as well as after the passage of a pension act is to be counted in determining the necessary qualifications for retirement and that the fact that some individuals earned their pensions by serving a comparatively short time after the passage of the act, whereas others had to continue in service for a greater period, did not operate to void the legislation.

The best rule seems to be that laid down in *Roddy* v. *Valentine, supra,* that where the elements of a contract are present, the Court *"need not strain for a legal classification."* The same case disposes of any controversy which might arise over the word "pension" as synonymous with "gratuity." It is clear that whether the sums which appellants claim are denominated "annuities," as the Illinois Act speaks of them, or "pensions," as the appellees would prefer to call them, the ultimate appraisal of their true nature and legal significance must rest upon facts and not names.

2. The confused state of the law in Illinois as a result of the decision in this case.

Until the decision of the Supreme Court of Illinois in the instant case, the Illinois law appeared to be settled that an annuity or pension was not a gratuity but, upon the resignation or retirement of the public servant, vested a right in him which he could enforce by a proceeding in court.

There was a line of earlier cases which overlapped some of the earlier vested interest cases and announced the contrary theory, but these were regarded as finally overruled by the decisions in *Porter* v. *Loehr*, 332 Ill. 353, (1928) and *DeWolf* v. *Bowley*, 355 Ill. 530, (1934). It is all the more

surprising, therefore, that the Supreme Court of Illinois, which had apparently overcome its vacillations and decided to adhere to a consistent and supportable theory, should suddenly have departed from the principles announced in its own later decisions and should have stated in this case (364 Ill. 547, 552) that:

> "The decisions of this court have uniformly been that pensions are not based on contract but are mere expectancies based upon anticipated continuance of existing law, and that future installments of pensions are not vested property rights."

The growth of the law in Illinois on retirement annuities and pensions may be traced by a survey of the more important cases.

In *Hughes* v. *Traeger*, 264 Ill. 612 (1914), a stenographer working under the civil service law in Chicago brought suit to declare unconstitutional a law creating a pension fund for his benefit and for the benefit of others in his class. He objected particularly to the deduction of $2.00 per month from his wages of $80.00. In discussing his bill, the court held that he had no property right in unearned salary and no standing in court and that there was nothing to prevent the state from disposing of the pension fund as it saw fit prior to his retirement. The court, however, cited Dillon on Municipal Corporations upon the subject of annuities and *Pennie* v. *Reis*, 132 U. S. 464, upon the proposition, page 467, that:

> "A change in the disposition of the fund would not, however, violate any right of the complainant, for until the happening of the event designated by the statute for its distribution he has no vested right in the fund but only an expectancy created by the law, which the law may revoke or destroy:".

People v. *Abbott*, 274 Ill. 380 (1916), was a suit by two former policemen of the City of Quincy, to compel the city authorities to set up a pension fund provided for by the Police Pension Fund Act of 1909. Both men were serving when the Act was passed and both later retired. They sought both creation of and participation in the fund and showed their qualifications. The act provided that each prospective annuitant should contribute to the fund but it does not appear that these individuals had ever made any such contribution.

The city raised the objection that the act was unconstitutional as in violation of Sec. 19 of Article IV of the Illinois Constitution, reading:

> "The general assembly shall never grant or authorize extra compensation, fee or allowance to any public officer, agent, servant or contractor, after service has been rendered or a contract made, nor authorize the payment of any claim, or part thereof, hereafter created against the state under any agreement or contract made without express authority of law; and all such unauthorized agreements or contracts shall be null and void; provided, that the general assembly may make appropriations for expenditures incurred in suppressing insurrection or repelling invasion."

The Court in *People* v. *Abbott* held (pages 384-385) that:

> "A system of pensions to municipal officers and employees injured or disabled while on duty or retiring after a term of service has gradually arisen and is being extended during recent years. The constitutionality of statutes establishing such pension system is sustained upon the ground that 'these annuities • • • are in the nature of compensation for services

previously rendered for which full and adequate compensation was not received at the time of the rendition of the services. It is, in effect, pay withheld to induce long-continued and faithful service, and the public benefit accrues in two ways:' by encouraging competent employees to remain in the service, and by retiring from the public service those who have become incapacitated from performing the duties as well as they might be performed by younger or more vigorous men. (1 Dillon on Mun. Corp.—5th ed.—sec. 430.) This court in *Hughes* v. *Traeger,* 264 Ill. 612, upheld the constitutionality of a pension act and approved the doctrine just quoted from Dillon. Such pensions generally are not considered donations or gratuities. The rule in the majority of jurisdictions is, that the legislature has power to require municipalities to pension their employees and raise the funds for that purpose. (5 McQuillin on Mun. Corp. sec. 2422; 1 Dillon on Mun. Corp.—5th ed.—secs. 105, 430; *State* v. *Love,* 34 L. R. A. (N. S.) 607, and note; also 24 Ann. Cas. 542, and note; *Trustees of Firemen's Fund* v. *Roome,* 93 N. Y. 313; *Commonwealth* v. *Walton,* 182 Pa. St. 373.) Some State courts have held such laws unconstitutional, the leading case setting forth this position being *State* v. *Ziegenhein,* 144 Mo. 283, but under the decisions of our own State the pension law here under consideration must be held constitutional. *Firemen's Benevolent Ass'n* v. *Lounsbury,* 21 Ill. 510; *Ryan* v. *Foreman,* 262 *id.* 175; *Hughes* v. *Traeger, supra.*"

A further argument was made that the Act could not apply to these policemen whose required service had been largely performed prior to the passage of the act. In disposing of this contention the court cited *State* v. *Love,* 89 Neb. 149; 34 L. R. A. (N. S.) 607, which had upheld a sim-

ilar Nebraska statute, and decided that the matter was entirely within the wisdom and discretion of the legislature.

Prior to the time of the decision in *Hughes* v. *Traeger, supra,* and up to and subsequent to *People* v. *Abbott,* a line of cases grew up which held, either directly or obiter, that a pension is a bounty springing from the graciousness and appreciation of the sovereign, which might be given, withheld, or taken away at pleasure. These cases, with the dates of decision are as follows:

Eddy v. *Morgan,* 216 Ill. 437, 449 (1905)
Ryan v. *Foreman,* 262 Ill. 175, 190 (1914)
Pecoy v. *Chicago,* 265 Ill. 78, 80 (1914)
Stiles v. *Retirement Board,* 281 Ill. 636, 641 (1917)
People v. *Retirement Board,* 326 Ill. 579, 582 (1927)
People v. *Hanson,* 330 Ill. 79, 90 (1928)
McCann v. *Retirement Board,* 331 Ill. 193, 201 (1928)

All these cases proceeded upon the old theory of the definition of a pension as a gratuity, disregarding the broader connotation of the term as used in *Roddy* v. *Valentine,* 268 N. Y. 228, quoted, *supra,* at page 39. They also wholly disregarded the constitutional prohibition in Sec. 19, Article IV of the Illinois Constitution against extra compensation for past services, nor does it appear that the Illinois Constitutional point was ever raised or called to the attention of the court in any of those cases.

The gratuity theory in Illinois was originally based on the decisions of this Court as to acts of Congress passed at a time when the term "pensions" commonly referred to the gratuities paid by the Government in recognition of past services in the Army and Navy. "The annuities payable under the Retirement Act are not gratuities in that sense." *Dismuke* v. *United States,* 297 U. S. 167, page 170. While this last statement was used by this Court as to

the Retirement Act involved in its decision in the *Dismuke* case, it is, we contend, equally applicable here to the Miller Act.

Congress is not prohibited from granting the pensions for past services in the Army and Navy which this Court in the *Dismuke* case termed gratuities. On the other hand, the foregoing provision of the Illinois Constitution prohibits the Legislature of that State from granting gratuities.

In *Miner* v. *Stafford,* 326 Ill. 204 (1927), the Supreme Court of Illinois held that the widow of a policeman was not entitled to an increase of pension provided for by a law which was passed after her husband had been injured in line of duty and after his death, but that she was entitled to a continuance of the pension granted by the law in force at the time of the injury and death of her husband, although it was claimed that that law had been wholly repealed and all rights thereunder terminated by the later statute. The decision reversed the Appellate Court, 239 Ill. App. 346, which had held that a pension was a "bounty springing from the graciousness and appreciation of sovereignty."*

---

*Another case in which the Illinois Supreme Court held that the rights arising under a statute vested at the time of the happening of the event was that of *Stanswsky* v. *Industrial Commission,* 344 Ill. 436 (1931), involving the rights of the widow of an employee under a State compensation act. The Court there held, pp. 438-440:

> "The liability of the employer and the rights of the workman were fixed at a definite amount under the law existing on January 8, 1929, the date of the injury. * * * the rights of neither can be affected by legislation which takes effect after the date of the injury. * * * It is clear that such rights to compensation * * * could not be enlarged or diminished by an act of the legislature which became effective in July, 1929."

In 1928, *Porter* v. *Loehr,* 332 Ill. 353, was decided. In that case a taxpayer filed a complaint seeking to restrain the Retirement Board of the Policemen's Annuity and Benefit Fund of Chicago from paying pensions to former policement in excess of the amounts allowed them by the laws in force at the time of their respective retirements. The Court held that since the increases in the pensions of those retired prior to the enactment of the law providing for the increase were based solely on services rendered prior to retirement, the increases were extra allowances for past services, were gratuities and were in violation of Section 19 of Article IV of the Illinois Constitution. The case draws the distinction between pensions earned prior to retirement which create enforceable rights and those conferred afterwards which are mere gifts or gratuities, citing Dillon on Municipal Corporations, *People* v. *Abbott, supra;* Matter of *Mahon* v. *Board of Education,* 171 N. Y. 263; *People* v. *Partridge,* 172 N. Y. 305; *Mead* v. *Acton,* 139 Mass. 341; and Gray on Limitations of the Taxing Power and Public Indebtedness, Sec. 338.*

With this decision in *Porter* v. *Loehr* the Court apparently confirmed *People* v. *Abbott,* ignored the line of cases beginning with *Eddy* v. *Morgan* and established a solid foundation for the decision in the next case of *DeWolf* v. *Bowley,* 355 Ill. 530 (1934).

In *DeWolf* v. *Bowley,* a judges pension act of July 1, 1919 was involved. It provided that after 24 years of service a judge of any court of record might retire at age 65 and be entitled to and "receive annually a pension during the remainder of his life" equal to one-half his compensation for the last year of active service. No contributions to the pension were required or made by the judges.

---

*The doctrine as to gratuities announced in *Porter* v. *Loehr* was approved in *Berman* v. *Board of Education,* 360 Ill. 535, 541 (1935).

The pension was to be paid from state, county or city funds, respectively, out of moneys not otherwise appropriated.

The judge who brought the action was 65 and had retired prior to reaching that age, after the term of service required by the statute. He was held entitled to draw the pension.

The statute was attacked as in violation of Section 19 of Article IV of the Illinois constitution but was upheld by the court, which said, page 533:

> "Pensions have generally been sustained on the ground that public benefit accrues in two ways: by encouraging such officers or employees to remain in the service, and by retiring from public service those who have become incapacitated from performing the duties as well as they might be performed by younger or more vigorous persons. (1 Dillon on Mun. Corp. (5th ed.) sec. 430.) Cooley, in his treatise on taxation, (1 Cooley on Taxation, (3d ed.) 189,) presents the view of courts generally of this country concerning pensions, that their primary object is not a private but public interest, to show appreciation for meritorious public service, which may reasonably be expected to have a powerful influence in inducing long and continued service. He expresses the opinion that the power of the legislature to pass such acts is undoubted. *Such pensions, generally, are not considered donations or gratuities but inducements to continued service.*" (Italics ours.)

In its decision the court relied upon *People* v. *Abbott* and *Porter* v. *Loehr*. Of the latter case the court said, page 536:

> "* * * while the retired officer in that case was entitled to continuance of the pension granted by the Pension act in force when he retired, he was not en-

titled to the increase provided by the amendment to that Act."

Hughes v. *Traeger, People* v. *Abbott, Miner* v. *Stafford, Porter* v. *Loehr* and *DeWolf* v. *Bowley,* show a steady progression in one direction and would seem to indicate that the law upon these pension cases had reached certainty and finality, based upon common sense and legal precedent. It is difficult to comprehend why the decision in the present case should have turned away from settled law and been based upon an earlier error. The court here not only held that appellants' rights were mere expectancies but went to great length to construe as applicable to them a statute (the 1935 amendment to the Miller Act, Appendix, page 68) which said:

"* * * The board of education * * * *as soon as practical after this law becomes effective, shall retire all teachers,* etc.

"*Every person so retired* from service shall be paid the sum of $500.00 annually and for life," etc.

We suggest to this Court that such a strained construction as that which applies the 1935 amendment to appellants who retired before its passage, may in itself amount to a denial of due process of law.

The assertion made by the Illinois Supreme Court in this case that under the reasoning of *Pennie* v. *Reis* all that became vested upon appellants several retirements was a right to any particular past due installment seems to us wholly unfounded. There is only one event happening, not a series of events occurring every time an installment falls due.

Life estates, life annuities, life tenances are among the oldest and best recognized features of the common law,

and from the inception of our law have had a well recognized and clearly defined meaning.

It is a matter of common knowledge that in the last few years a practice has become prevalent of investing in annuities sold by insurance companies. One form of such annuities is what is called a "deferred payment annuity" which may be paid for in a lump sum. Rights in such a contract certainly vest upon the entering into of the contract and the payment of the consideration although the annual payments of the annuity do not commence until the deferred date agreed upon.

In any event, with respect to the Illinois cases, this Court should take cognizance of conflicting decisions upon the point in issue and should apply the rule stated in *Pease* v. *Peck*, 18 How. 595, at page 599, that:

> "When the decisions of the state court are not consistent, we do not feel bound to follow the last, if it is contrary to our own convictions,—and much more is this the case, where, after a long course of consistent decisions, some new light suddenly springs up or an excited public opinion has elicited new doctrines, subversive of former safe precedent."

3. Where, as in this case, there is ample consideration for a contract between teacher and state, the presence or absence of teacher contributions is immaterial.

The Appellees take the position in their statement against the jurisdiction of this Court that no contract can exist or vested rights arise in the absence of contributions made by the teachers themselves toward their own annuities. This is an argument not considered by the courts below but it can be answered upon reason and authority that the presence or absence of individual contributions does not affect the contract rights here claimed.

Appellants' contracts with the state arose upon their retirement and change of position and by reason of their acceptance of an offer made to them and the consideration which flowed between the parties at that time, as has been more fully discussed in the preceding sections of this brief. There would have been no additional consideration if the contributory feature had been added.

The state cases make no distinction between contributions or lack of them. Where contributions are present, the sums withheld are not considered the property of the employee and he has no contract which will prevent the fund from being divested and his expectancy therein destroyed. The amounts deducted from his salary to form a part of his future pension do not become his property and cannot be controlled or disposed of by him. The fund created by these deductions, which is a part of a larger fund contributed by the governmental body, is not encumbered by any vested rights of the employee and he may not assert any.

Hughes v. *Traeger*, 264 Ill. 612.

It is not until the happening of the event designated by the statute for the distribution of the fund that any vested right is created and the employee may be heard in support of a claim to participation in the fund.

Pennie v. *Reis*, 132 U. S. 464.
Roddy v. *Valentine*, 268 N. Y. 228, 197 N. E. 260.
Dillon on Municipal Corporation, 5th Ed., Secs. 430, 431.

If the theory that contributions in and of themselves constitute the test of rights created were sound, the employee, teacher, policeman, stenographer or clerk would have a vested right in a pension fund or annuity which

would arise at the time the contribution was withheld from salary. Yet all the cases deny that such an interest exists prior to retirement. They hold, following *Pennie* v. *Reis, supra,* that no property rights are created because the sums withheld are not the property of the employee. For a clear and concise statement of the principles which govern this case we refer again to the quotation from *Roddy* v. *Valentine,* 268 N. Y. 228, which is given above in this brief, page 39.

The Illinois Courts have not applied any rule requiring contributions. *DeWolf* v. *Bowley,* 355 Ill. 530 (1934), held that judges had vested rights to an annuity to which they had contributed nothing. *People* v. *Abbott,* 274 Ill. 380, sustained a claim of right to participate in a police pension fund where contributions were provided for in the law but none had in fact been made.

Other recent cases finding a contract and protecting vested rights acquired upon retirement where no contributions were made by the employee of a private corporation, are *Schofield* v. *Zion's Co-operative Mercantile Institution,* 85 Utah 281, 39 Pac. (2d) 342, 96 A. L. R. 1083 (1934) (an uncommonly well reasoned discussion of the whole subject); and *Psutka* v. *Michigan Alkali Co.,* 274 Mich. 318, 264 N. W. 385 (1936).

In December, 1916, the "Illinois Pension Laws Commission", having been appointed by the Governor the previous January pursuant to action of the Legislature, reported on public employee pension laws in Illinois and also in other states and countries. This report was printed and published by authority of the State of Illinois. Among the conclusions of the Commission itself, the following was stated as to the effect of pensions on wages and salaries whether contributions were made or not (p. 282):

> "Whether the contribution to a pension fund be taken wholly from the employee's wages or salary, or

be paid wholly by the employer, or be derived in part from each, these contributions are in all three cases to be regarded as in reality a deduction from wages or salary. It is the opinion of students of the pension problem that the existence of a pension system in connection with any position or employment is taken into account by both parties to the contract of employment, and that, broadly speaking, wages and salaries actually paid are in due course reduced below what they otherwise would be by the amount of the total contributions from both the employer and employee to a pension fund. The employee will thus pay for his pension by deductions from his wages or salary, whether he is conscious of it or not.'"*

Where the statutory scheme contemplates that a retirement fund is created wholly or in large part out of public money, the withholding of small amounts from service

*This same report discloses, pp. 22, 24, that in Great Britain from 1859 to the date of the report all public employee pension systems were noncontributory and the pensions were paid entirely from public moneys. The report stated, p. 23:

"In brief, after a hundred years of experience with civil service pensions in England, the pensions are regarded very generally as deferred pay. Thus an employee acquires an equity in the nature of a pension expectation; and to leave the service without a consideration for this equity is analogous to lapsing life insurance without a surrender value. * * * It was in the law of 1909 that the principle was recognized that even with a noncontributory system the employee who withdraws from the service should receive certain benefits. He should receive these because he worked for lower wages or salary than he would have done if no pension system had existed. In other words, even a noncontributory system of pensions has in England become virtually contributory, because wages and salaries are held at a lower level on account of the pension prospects."

compensation does not constitute contributions to the fund and does not create any right to it. Where, however, the statutory conditions for retirement have been met and an award of the annuity or benefit has been made, or of right should have been made, the interest becomes vested and takes on the attributes of a contract, which, in the absence of statutory reservations, may not legally be diminished

---

The report also stated as to pensions in Germany (p. 30) that

> "As in England we find the pensions for government employees on a noncontributory basis."

A similar statement is made as to the civil service system in Austria-Hungary, (p. 32):

> "Pensions sufficient to give a subsistence are secured by the treasury without contributions from employees * * *"

While at the time of the Commission's investigation (1916) all pension systems then existing in Illinois were contributory, the report stated (p. 49):

> "This practice (contributions by employees) is by no means universal in this country. Out of 177 acts investigated, 65, or about 37 percent, do not provide for direct contributions from salaries of employees."

The report then proceeds to analyze these 65 systems relating to firemen's pensions, police pensions and teachers' pensions.

The Illinois Commission itself in analyzing the theory of public employee pension systems said (p. 273):

> "Continuity of service is of great advantage to the employer in most lines of effort. It is especially so in the public service, * * *.
>
> "Pensions tend also to protect the public service from incompetence through the continuance in that service of an employee after his period of efficiency has passed. * * * The chief attraction of a pension system to an employee is, however, that it means a life annuity at the end of service."

or otherwise adversely affected by subsequent legislation, regardless of the presence or absence of contributions.

Respectfully submitted,

ALLAN J. CARTER,
Counsel for Appellants.

ALFRED R. BATES,
C. T. B. GOODSPEED,
KARL D. LOOS,
PRESTON B. KAVANAGH,
Of Counsel.

BLANK

PAGE

APPENDIX.

Sections 138 and 161 of Otis Amendments relating to the Board of Education of the City of Chicago effective April 20, 1917.

§ 138. A board of three examiners is hereby constituted, whose duty it shall be to examine all applicants who are required to hold certificates to teach and the board of education shall issue gratuitously to those who pass a required test of character, scholarship and general fitness, such certificates to teach as they are found entitled to receive. Such board of examiners shall consist of the superintendent of schools together with two persons approved and appointed by the board of education upon the nomination of the superintendent of schools. The board of examiners shall hold such examinations as the board of education may prescribe, upon the recommendation of the superintendent of schools and shall prepare all necessary eligible lists, which shall be kept in the office of the superintendent of schools and be open to public inspection. Members of said board of examiners shall hold office for a term of two years. Appointments and promotions of teachers, principals and other educational employees shall be made for merit only, and after satisfactory service for a probationary period of three years, (during which period the board may dismiss or discharge any such probationary employee upon the recommendation, accompanied by the written reasons therefor, of the superintendent of schools), appointments of teachers and principals shall become permanent, subject to the rules of the board concerning conduct and efficiency, and subject to removal for cause in the

manner provided by section 161 of this Act: *Provided, however,* that in determining the duration of the probationary period of employment in this section specified, there shall be included the time of past service of all teachers and principals and other educational employees who are in the schools at the time, or who have been therein within five years immediately preceding the time this Act goes into effect: *And further provided,* that when any teacher or principal, who has been promoted to the position of assistant or district superintendent or a member of the board of examiners, is relieved of the duties of such position, such person shall be reinstated in the position from which he was promoted. The words "teachers and principals" shall be construed to include all members of the teaching force except the superintendent of schools, assistant and district superintendents and members of the board of examiners. (Smith-Hurd Ill. Rev. Stats. 1925, chap. 122, par. 161, sec. 138.)

§ 161. No teacher or principal who has been or shall be appointed by said board of education shall (after serving the probationary period of three years specified in section 138 of this Act) be removed except for cause, and then only by a vote of not less than a majority of all members of the board, upon written charges presented by the superintendent of schools, to be heard by the board, or a duly authorized committee of the same, after thirty days' notice, with copy of the charges, is served upon the person against whom they are preferred, who shall have the privilege of being present, together with counsel, offering evidence and making defense thereto. At the request of any party such hearing shall be public. The action and decision of the board in the matter shall be final. Pending the hearing of such charges, the person charged may be suspended

as by the rules of the board may be prescribed: *Provided, however,* that in the event of acquittal, such person shall not suffer any loss of salary by reason of the suspension. If at any time any member of the teaching force who is willing to continue is dismissed or discharged before the time he or she would under the provisions of this Act be entitled to a pension, then such member shall be paid back at once the money he or she may have contributed under this law. Any member of the teaching force who shall retire voluntarily from the service, prior to entering upon the period of service during which he or she might become entitled to a pension or benefit for or on account of disability, as provided by law, shall receive a refund of one-half of the money he or she shall have contributed under this law. (Smith-Hurd Ill. Rev. Stats. 1925, chap. 122, par. 186, sec. 161.)

Original Miller Act.

Effective May 19, 1926.

An Act to provide for the compulsory retirement of teachers, principals, district superintendents and assistant superintendents, and the payment of retirement annuities.

Section 1. In every city in this State having a population exceeding 250,000 inhabitants, the board of education of such city shall retire from active service on February 1 and August 1 of each year, all teachers, principals, district superintendents, and assistant superintendents in the public schools of such city in accordance with the following schedule:

(a) In the year 1926 all teachers, principals, district superintendents, and assistant superintendents seventy-five or more years of age, shall be retired from active service.

(b) In the year 1927 all teachers, principals, district superintendents, and assistant superintendents seventy-four or more years of age, shall be retired from active service.

(c) In the year 1928 all teachers, principals, district superintendents, and assistant superintendents seventy-three or more years of age, shall be retired from active service.

(d) In the year 1929 all teachers, principals, district superintendents, and assistant superintendents seventy-two or more years of age, shall be retired from active service.

(e) In the year 1930 and in each and every year thereafter, all teachers, principals, district superintendents, and assistant superintendents seventy or more years of age, shall be retired from active service.

Sec. 2. Each person so retired from active service who served in the public schools of such city for twenty or more years prior to such retirement shall be paid the sum of fifteen hundred dollars ($1,500.00) annually and for life from the date of such retirement from the money derived from the general tax levy for educational purposes: *Provided,* that any teacher, principal, district superintendent, or assistant superintendent so retired and receiving such annuity shall be subject to the call of the superintendent of schools in such city for consultation and advisory service: *And, provided further,* that nothing in this Act contained shall in any way impair or prejudice any rights of a teacher, principal, district superintendent, or assistant superintendent so retired to annuity under other statutory provisions concerning any teachers' pension fund, or teachers' pension and retirement fund, established in accordance with the provisions of any statute of this State; and shall not repeal or modify any other such statutory provisions. (Cahill's Ill. Rev. Stats. 1927, chap. 122, par. 269, (1), (2).)

Amendment of 1927 to the Miller Act.

An Act to add section 3 to and to amend the title of "An act to provide for the compulsory retirement of teachers, principals, district superintendents, and assistant superintendents, and the payment of retirement annuities," approved May 19, 1926.

SECTION 1. Section 3 is added to "An Act to provide for the compulsory retirement of teachers, principals, district superintendents, and assistant superintendents, and the payment of retirement annuities," approved May 19, 1926, the added section to read as follows:

SECTION 3. All teachers, principals, district superintendents, and assistant superintendents who have served in the public schools of the United States for twenty-five years or more and who have served in the public schools of such city for 15 years immediately prior to retirement under this Act and who are 65 or more years of age and who have not reached the age of compulsory retirement as provided in sections one and two of the last mentioned Act to which this section is added, shall upon their own request be retired from active service and thereafter be paid annuities for life from the moneys derived from the general tax levy for educational purposes. Such annuities shall be paid respectively according to the following table of ages and annuities annually:

Age 65—Ten hundred dollars ($1,000)
Age 66—Eleven hundred dollars ($1,100)
Age 67—Twelve hundred dollars ($1,200)
Age 68—Thirteen hundred dollars ($1,300)
Age 69—Fourteen hundred dollars ($1,400)
Age 70—And thereafter fifteen hundred dollars ($1,500)

And provided that at the age of 65 and at any year of age thereafter, the board of education of such city may require a physical or a mental examination of any such teacher, principal, district superintendent or assistant superintendent upon the request of the superintendent of schools of such city and if any such teacher, principal, district superintendent or assistant superintendent be found incapacitated for service after trial as already or hereafter provided by law he shall be retired at the annuity above provided for that age of voluntary requirement.

And provided further, that all such teachers, principals, district superintendents, and assistant superintendents shall be subject to the same conditions as to advisory service as provided for in section 2 of said last mentioned Act to which this section is added. Nothing contained in this section or in said last mentioned Act to which this section is added shall in any way impair or prejudice any right of a teacher, principal, district superintendent, or assistant superintendent so retired to annuity under other statutory provisions concerning any teachers' pension fund or teachers' pension and retirement fund established in accordance with the provisions of any statute of this State, and the payment to be made under this section or the Act to which it is added shall be in addition to any such annuity.

SECTION 2. The title of said Act is amended to read as follows: "An Act to provide for the compulsory and voluntary retirement of teachers, principals, district superintendents and assistant superintendents, and the payment of retirement annuities." In effect July 1, 1927. (Cahill's Ill. Rev. Stats. 1927, chap. 122, par. 269 (3).)

Section 3 of Miller Act as Amended in 1929.

Section 3. Any superintendent of schools or member of the board of examiners and all teachers, principals, district superintendents, and assistant superintendents, now or hereafter serving in any of the aforesaid capacities in the public schools of such city, and whose services in any one or more of any educational positions in the public schools of such city within the last twenty (20) years prior to retirement under this Act, shall aggregate, when taken together, fifteen (15) years or more, and who have served in the public schools of the United States for twenty-five years or more, and who are sixty-five (65) or more years of age, and who have not reached the age of compulsory retirement, as provided in sections one and two of this Act, shall upon their own request, be retired from active service and thereafter be paid annuities for life from the moneys derived from the general tax levy for educational purposes; *provided* that no superintendent of schools or member of said board of examiners shall be subject to compulsory retirement under the provisions of this Act, during his or her term of office.

Such annuities shall be paid respectively according to the following table of ages and annuities annually:

Age 65	ten hundred dollars	($1,000)
Age 66	eleven hundred dollars	($1,100)
Age 67	twelve hundred dollars	($1,200)
Age 68	thirteen hundred dollars	($1,300)
Age 69	fourteen hundred dollars	($1,400)

And provided, that at the age of sixty-five (65) and at any year of age thereafter, the board of education of such city may require a physical or a mental examination of any such teacher, principal, district superintendent, or assistant

superintendent upon the request of the superintendent of schools of such city and if any such teacher, principal, district superintendent, or assistant superintendent be found incapacitated for service after trial as already or hereafter provided by law he shall be retired at the annuity above provided for that age of voluntary retirement.

And provided further, that all such superintendents of schools, members of the board of examiners, teachers, principals, district superintendents, and assistant superintendents shall be subject to the same conditions as to advisory service as provided for in section 2 of this Act. Nothing contained in this Act shall in any way impair or prejudice the right of any superintendent of schools, member of the board of examiners, teacher, principal, district superintendent, or assistant superintendent so retired to annuity under other statutory provisions concerning any teachers' pension fund or teachers' pension and retirement fund established in accordance with the provisions of any statute of this State, and the payment to be made under this section, or the Act which it amends, shall be in addition to any such annuity. (Cahill's Ill. Rev. Stats. 1929, chap. 122, par. 269 (3).)

Amended Miller Act.

Effective July 12, 1935.

"An Act to amend Sections One and Two and the title of 'An Act to provide for the compulsory and voluntary retirement of teachers, principals, district superintendents, and assistant superintendents and for the voluntary retirement of superintendents of schools and members of the board of examiners, and for the payment of retirement annuities,' approved May 19, 1926, as subsequently amended, and to repeal Section 3 of said Act."

Be it enacted by the People of the State of Illinois represented in the General Assembly;

Section 1. Sections 1 and 2 of 'An Act to provide for the compulsory and voluntary retirement of teachers, principals, district superintendents and assistant superintendents and for the voluntary retirement of superintendents of school and members of the board of examiners, and for the payment of retirement annuities,' approved May 19, 1926, as amended, are amended to read as follows:

Section 1. In every city in this State having a population exceeding 250,000 inhabitants, the board of education of such city, as soon as practical after this law becomes effective, shall retire all teachers, principals, district superintendents and assistant superintendents in the public schools in such city, who are sixty-five or more years of age, and thereafter shall retire all teachers, principals, district superintendents and assistant superintendents in the public schools of such city, on attaining the age of sixty-five years.

Section 2. Each person so retired from service shall be paid the sum of five hundred dollars ($500.00) annually and for life from the date of such retirement from the money derived from the general tax levy for educational purposes. *Provided,* that any teacher, principal, district superintendent, or assistant superintendent so retired and receiving such annuity shall be subject to the call of the superintendent of schools in such city for consultation and advisory service: *And, provided further,* that nothing in this Act contained shall in any way impair or prejudice any rights of a teacher, principal, district superintendent, or assistant superintendent so retired to annuity under other statutory provisions concerning any teachers' pension fund, or teachers' pension and retirement fund, established in accordance with the provisions of any statute of this State.

Section 2. The title of said Act is amended to read as follows: "An Act to provide for the compulsory retirement of teachers, principals, district superintendents, and assistant superintendents, and for the payment of retirement annuities."

Section 3. Section 3 of said Act is repealed.
(Ill. State Bar Stats. 1935, chap. 122, par. 269 (1), (2).)

BLANK

PAGE

FILE COPY

Supreme Court, U. S.
FILED
MAY 1 1937
CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1936.

No. [redacted] 5

CHESTER C. DODGE, CATHERINE L. BAIRD, AZILE B. REYNOLDS, ET AL., *Appellants*,

v.

BOARD OF EDUCATION OF THE CITY OF CHICAGO, ET AL., *Appellees*.

REPLY BRIEF FOR APPELLANTS.

ALLAN J. CARTER,
189 West Madison Street,
Chicago, Illinois,
Counsel for Appellants.

ALFRED R. BATES,
C. T. B. GOODSPEED,
KARL D. LOOS,
PRESTON B. KAVANAGH,
Of Counsel.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

BLANK

PAGE

TABLE OF CONTENTS.

INDEX.

Page

1. The argument that a financial emergency necessitated the adoption of the 1935 Amendment to the Miller Act is not only immaterial in this case but also misleading 1

2. Contributions by a teacher to a retirement fund are only one element of consideration for a contract. Such contributions are not necessary if other and sufficient consideration is present 4

3. A brief survey of the cases upon which Appellees rely 8

   (a) The decisions of this Court 8

   (b) The Illinois Cases 10

TABLE OF CASES.

Armstrong v. City of Chicago, 247 Ill. App. 584..... 8
Beutel v. Foreman, 288 Ill. 106 ..... 10, 11
De Wolf v. Bowley, 355 Ill. 530 13
Klench v. Bd. of Pension Commissioners, 79 Cal. App. 171..... 14
People v. Abbott, 274 Ill. 380 6
People v. Hanson, 330 Ill. 79 ..... 10, 11
Phelps v. Bd. of Education, 299 U. S. ——, 57 Sup. Ct. Rep. 482 ..... 8, 9
Psutka v. Michigan Alkali Co., 274 Mich. 318..... 7
Raines v. Bd. of Trustees Pension Fund, 365 Ill. 610.. 3, 10, 11, 12
Retirement Board v. McGovern, 316 Pa. 161..... 6, 7, 14
Roddy v. Valentine, 268 N. Y. 228 ..... 13, 14
Salt Mfg. Co. v. East Saginaw, 13 Wall. 373..... 9
Schofield v. Zion's Co-operative Mercantile Institution, 85 Utah 281 7
Stanislaus v. San Joaquin C. & I. Co., 192 U. S. 201.. 9, 10
State v. Love, 89 Neb. 149 6
Wisconsin and Michigan Ry. Co. v. Powers, 191 U. S. 379 9

STATUTES AND TEXTS CITED.

Page

The Miller Act of 1926 and 1927. Cahill's Ill. Rev. Stats. 1927, Chap. 122, Par. 269 (1) (2) (3)..... 2, 3, 4, 5, 6, 7, 9, 14

The 1935 Amendment to the Miller Act. Ill. State Bar Stats., Chap. 122, Par. 269 (1) (2)..... 3

Chicago's Public School Teachers Pension and Retirement Fund Act. Smith-Hurd Ill. Rev. Stat. 1929, Chap. 122, Pars. 178, 183, Secs. 155, 158 ..... 2, 3, 4

Otis Amendment of 1917 to School Law. Smith-Hurd Ill. Rev. Stats. 1925, Chap. 122, Par. 161, 186, Secs. 138 161 ..... 5, 8

Williston on Contracts, Rev. Ed. Secs. 65, 102, 102A.. 4

Dillon on Municipal Corporations, 5th Ed., Sec. 431... 13

IN THE

Supreme Court of the United States

OCTOBER TERM, 1936.

No. 713.

CHESTER C. DODGE, CATHERINE L. BAIRD, AZILE B. REYNOLDS, ET AL., *Appellants,*

v.

BOARD OF EDUCATION OF THE CITY OF CHICAGO, ET AL., *Appellees.*

REPLY BRIEF FOR APPELLANTS.

At the oral argument of this cause on April 28, 1937, permission was granted to file this reply brief on or before May 1, 1937.

1. The argument that a financial emergency necessitated the adoption of the 1935 Amendment to the Miller Act is not only immaterial in this case but also misleading.

In their statement of facts (Brief, pages 6-9), appellees call attention to the existence in 1934 of a financial emergency which faced the Chicago Board of Education. They imply that this state of affairs was due in a measure to

the burdensome requirements of the Miller Act annuities payable to retired teachers. They also state that these retired teachers were receiving pensions under the Miller Act ($1500.00) and under a pension law of 1909 ($1000.00) which aggregated more than the maximum salaries received by active elementary school teachers. (Brief, pages 8, 51-52.) These figures with respect to maximum salaries are taken from the answer of the Board (R. 115), were not admitted by the reply (R. 151-154) and no proof was offered to support them.

We think that this point is not material to the only question in the case, which is whether or not appellants suffered an unconstitutional impairment of contract rights. This 1935 Act did not purpose to be emergency legislation and was passed after the close of the so-called depression. Nevertheless, it can be shown that the Miller Act annuities did not in fact constitute a crushing burden upon the taxpayers and that the 1909 pension fund entailed greater costs with smaller returns.

The 1909 pension law (Smith-Hurd Ill. Rev. Stats. 1929, Ch. 122, Pars. 178 and 183, secs. 155 and 158; R. 128) known as the Chicago Public School Teachers Pension and Retirement Fund Act, provided for an annuity of $800.00 per year after 25 years service and $1,000.00 per year after 35 years. It established a fund to which the teachers made small contributions, voluntary for those teaching prior to 1909 and compulsory for those entering the service after that date. The contributions ranged from $10.00 per year per teacher in service four years or less, to $50.00 per year after twelve years of service. Thus a teacher entering the school system in 1909 or thereafter would be entitled to receive $800.00 per year upon retirement in 25 years and would have contributed during that time, by compulsory deductions from salary, the sum of $850.00. The balance was to be raised by taxation or by transfer from the educational fund of the Board.

In the answer of the Appellee Board (R. 128-129) is an allegation that an independent audit showed that by 1930 this 1909 Pension Fund had incurred a deficit of $35,-851,000 which, if amortized over a period of 40 years, would require an annual tax levy of $2,523,000. In contrast to this it appears that the 1935 budget allowance for Miller Act annuities was $1,125,000.00 (R. 81). This budget appropriation of $1,125,000 was less than one per cent of the total 1935 budget of $187,270,890.97 (R. 82). Furthermore, this appropriation of $1,125,000 represented the peak load for Miller Act annuities since the 1935 amendment operated to reduce these annuities to $500 per year in the case of all future retirements. The appellants, who had retired or become entitled to retirement prior to the amendment constitute a rapidly diminishing class whose life expectancy as a group is short.

Under the allegations of its own answer, the financial difficulty of the Board was more directly attributable to the 1909 pension fund than to the Miller Act. The fund had a tremendous deficit but there was no deficit under the Miller Act because there was no fund but an annual tax levy. The relief said to be sought by the Board was secured to the legal limit by the 1935 amendment to the Miller Act which, without question, limited the annuities to $500.00 per year for those who sought to retire after the amendment became effective.

While the appellees would have this Court believe that the 1909 pension law, which is not involved in this case, is all the protection that appellants need or to which they are entitled, the record does not show how many of appellants participate in the benefits under that Act by voluntary election in the case of those teaching prior to 1909. The only witness testifying on this point (R. 185) had not brought himself within its provisions. The recent case of *Raines* v. *Board of Trustees Pension Fund,* 365 Ill. 610, cited and relied upon by appellees (Brief, pages 33-35) suggests that even those teachers who made compulsory contributions to

the 1909 fund may have their pensions cut after retirement at the will of the legislature.

2. Contributions by a teacher to a Retirement Fund are only one element of consideration for a contract. Such contributions are not necessary if other and sufficient consideration is present.

Appellees would have it that in order to establish vested contract rights to a pension or annuity, there must be contributions by the teacher. Appellees further insist that the mere fact of contribution is not enough but that the contributions must have been voluntary and not compulsory in order to confer vested rights. If this is true then neither the Miller Act here involved nor the 1909 Pension Fund Act in Illinois confer any enforceable rights on the retired teacher.

This we submit is an erroneous interpretation of the law of contracts. It needs no citation of authority to show that a State can offer a binding contract by a statute which contains no reservations. The offer is to a unilateral contract and the act requested of the offeree is in this case the act of retirement after a continuous period of teaching which, undertaken with the intent to accept the offer, creates a contract without more. *Williston on Contracts,* Revised Ed., Vol. I, Sec. 65.

The consideration required to support a unilateral contract is a detriment incurred by the promisee or a benefit received by the promisor at the request of the promisor. "Detriment" in testing the legal sufficiency of consideration, means giving up something which the promisee was privileged to keep or doing something which he was privileged not to do. "Benefit" must mean the receiving in exchange for the promise, some performance or forbearance, which the promisor was not previously entitled to receive. *Williston on Contracts,* Revised Ed., Vol. I, secs. 102, 102A.

Here the benefits to the promisor (the State) are plain. The Miller Act unloaded from the system a burden of

elderly teachers, which the Superintendent of Schools and Board of Education deemed highly desirable. (R. 51-52, 54.) At the same time it made places for younger teachers and held out a definite incentive to all those in the service to continue teaching and thus reduce an expensive turnover. All this could be accomplished at no great additional cost in the opinion of the Superintendent, the Board and its actuary (R. 64-70).

The detriment to the promisees (the teachers) is clear. They gave up active teaching positions at larger salaries (R. 184-187; 65, 66, 69) and, by retiring, performed an act which they were not theretofore compelled to do. Something is said by the appellees about the present insecurity of teacher tenure and of the right to teach. When the Miller Act was passed, both parties to this contract considered that the teachers had an absolute right to their positions derived from the Otis amendments of 1917 to the School Law providing that "appointments of teachers and principals shall become permanent," (quoted in full in our main brief, pages 59-61). See also the statement of the Superintendent of Schools at R. 51. If this view was in any way erroneous, it was a mere mistake of law and constitutes no ground for voiding a contract entered into in good faith by the parties.

There was a legal consideration here for the several contracts between the teachers and the State. It served to bind the parties as fully as though small amounts had been contributed by the teachers and large amounts by the State. The law, as set forth in our main brief, is clear that rights vest at the time of retirement and that the sufficiency of consideration will be tested as of that date. The presence or absence of contributions can be dismissed by saying that they are no more important than any other legal consideration and by reference to the universal rule that contributions vest no rights prior to retirement.

Appellants to the number of 162 were retired under the compulsory provisions of the Miller Act of 1926. The re-

maining 783 retired or sought to retire by voluntary action and to take advantage of the annuities offered by the Miller Act (R. 8-25, 93-105, 165-170, 206-255).

There can be no question that the second group performed every act required to signify acceptance of the offer made by the Act and that they successfully complied with its terms. As to the first group, whose retirement was compulsory, we submit that consideration is clearly present. They likewise have fully complied with all the requirements of the Miller Act.

The record is silent as to the exact dates of retirement of all these 162 appellants but it appears from the complaint that appellant Dodge retired February 1, 1927 at age 74; Armstrong retired January 23, 1929 at age 73; Coddington retired August 1, 1929 at age 72; Cook and Keen retired February 1, 1930, being respectively 70 and 72 years of age; Whigam retired February 1, 1931 at age 70; Toole retired February 1, 1931 at age 70; and Morse retired August 1, 1934 at age 70 (R. 14-16, 185, admitted in Answer, R. 122.)

All of these men and women, upon their retirement, waived their right to permanent teaching positions and thus incurred a detriment which constituted valid consideration for a contract. All of them continued to teach in the school system for some time after the passage of the Miller Act of 1926. They contributed their share of the required consideration for the annuities offered and satisfied the requirement that the extent of necessary service after the passage of the law was a matter for legislative and not judicial determination. *State* v. *Love,* 89 Neb. 149, 131 N. W. 196; *People* v. *Abbott,* 274 Ill. 380. The same view is expressed in *Retirement Board* v. *McGovern,* 316 Pa. 161, where the court said, pages 168, 172:

> "Many of these employees, from service and age, were entitled to and did retire shortly after the act's effective date by making but few payments as members of the system. * * *

> "To require all employees of a city, county or state to contribute for the entire length of time they were in service prior to the effective date of the act would be subversive of the proper purposes of the legislative undertaking. * * * Then, too, there is no legislative prohibition against the amount of the salary that shall be paid to such employee, or when it shall be paid, or the amount of adjusted compensation then to be provided for and paid in the future. This compensation may depend on a long or short service after the effective date of the Retirement Act, as the legislature sees fit."

It appears from a footnote to page 168 of the opinion in the *McGovern* case that the court was advised that employees who had received retirement pay of $275,341.76, actually contributed less than one per cent of that amount.

Our position is strengthened by the fact that the Illinois legislature was careful, in the Miller Act, to use only the words "annuity" and "annuities." These words taken in their ordinary accepted sense imply a yearly payment of money for an agreed term (as in this case for life) in return for a consideration received before the payments began.

If, as must be admitted, the right to annuities or pensions vests when the contract is made, there is nothing in the argument of the Supreme Court of Illinois in the instant case (R. 271) that unpaid installments of annuities are not within the terms of the contract and may be withheld at pleasure. Annuity contracts between private corporations and their employees are construed to give vested rights in unpaid installments where no contributions were made (*Schofield* v. *Zion's Cooperative Mercantile Institution*, 85 Utah 281, 39 Pac. (2d) 342, 96 A. L. R. 1083; *Psutka* v. *Michigan Alkali Co.*, 274 Mich. 318, 264 N. W. 385) and the rule should be the same as between a state and its employees. The appellants here have fully performed and are entitled to performance by the State, whose part of the contract remains to some extent executory. No question arises of a

depleted fund which would prevent performance. The annuities to be paid are raised as part of the general tax levy for educational purposes and the means to secure them are ready at hand.

3. A brief survey of the cases upon which Appellees rely.

(a) The decisions of this Court.

Appellees principal reliance is upon the cases of *Phelps and Askam* v. *Board of Education,* decided March 1, 1937, 299 U. S. ...., 57 Sup. Ct. Rep. 482. There an emergency measure passed by the New Jersey legislature permitted each local Board of Education to reduce teacher salaries within certain limits for the period of the school year July 1, 1933 to July 1, 1934. The reduction suffered by appellants in those cases was attacked as contrary to the provisions of tenure of teaching positions and guaranteed salaries said to be created by an earlier act.

This Court held that nothing was to be found in the record which indicated that the school board was bound by contract with the teacher for more than the current year. This holding alone should be sufficient to dispose of the comparison made between the *Phelps* case and the instant one.

Appellants here claim that the Act of 1917, known as the Otis amendments, and particularly Sec. 161 thereof, which appears at page 60 of our original brief gave them the security of permanent teaching tenure by the words:

> "No teacher or principal who has been or shall be appointed by said board of education shall (after serving the probationary period of three years specified in section 138 of this act) be removed except for cause"
> * * *.

The only case upon the subject so holds. *Armstrong* v. *City of Chicago,* 247 Ill. App. 584. But the actual existence of permanent teaching tenure is not so important as the fact that both the teachers and the Board of Education

considered that it existed at the time of the passage of the Miller Act. The giving up of the teaching positions and the act of retirement was thus a strong element of consideration for the annuities offered by the State of Illinois.

In the *Phelps* case the teachers had performed their obligation to teach throughout the school year and had received full compensation for that service. Appellants here had accepted the offer of the State and fully performed the obligations specified in that offer; but the State had, by 1935, only partially performed its promises and had paid only part of the consideration which it agreed to pay to the retired teachers *"annually and for life"*.

Appellees in their brief, pages 54-59, cite and discuss the cases of *Salt Mfg. Co.* v. *East Saginaw*, 13 Wall. 373; *Wisconsin and Michigan Ry. Co.* v. *Powers*, 191 U. S. 379; and *Stanislaus County* v. *San Joaquin C & I Co.*, 192 U. S. 201.

None of them, of course, purport to say that a State may not make a legislative contract with a private individual. Each one is authority for the proposition that no binding contract, impossible of amendment, will be implied from a legislative enactment which is offered indiscriminately to an unascertained class, especially where it involves the abdication of powers essentially governmental.

In the *Salt* case a bounty and exemption from taxation was offered to all persons and corporations who would bore for and manufacture salt within the State of Michigan. This Court held that such a statute was similar to a bounty offered for killing wolves, payable so long as the statute was in force but subject to repeal. It was "an arrangement determinable at the will of either of the parties, as much so as the hiring of a laboring man by the day." (13 Wall. 373, 377.)

The *Wisconsin and Michigan Railway Co.* case concerned a tax exemption offered for a period of ten years to railroads building lines north of a certain parallel. The opinion by Mr. Justice Holmes takes the view that the legislature was not making promises but framing a scheme of

public revenue and public improvement, which was addressed to the world at large and might be later repealed.

In *Stanislaus County* v. *San Joaquin,* a water company sought to retain in perpetuity a certain rate of return upon their invested capital which was provided as a minimum by a California statute of 1862. As in the preceding cases this Court was of opinion that the State had never intended to divest itself of the sovereign functions of rate making any more than it intended to abdicate the power to levy taxes.

In all of these cases the Court recognized that each party to the alleged contracts was engaged in a continuing course of operations. Insofar as these operations were completed prior to the repeal or modification of the statute granting special privileges, the appellants were entitled to those privileges. Beyond that they were not entitled. There is a marked difference between cases of this type and the instant case where one party, the teacher, has completely performed the act for which the offer is made. Other differences in the nature of the subject matter of the legislation and the possibility of definitely ascertaining the class to whom the offer was made are also apparent.

(b) The Illinois Cases.

Appellees rely upon the cases of *Beutel* v. *Foreman,* 288 Ill. 106, and *People* v. *Hanson,* 330 Ill. 79 (Brief, pages 24-29, 31-32), and *Raines* v. *Board of Trustees Pension Fund,* 365 Ill. 610 (Brief, pages 32-35).

The *Beutel* case and *People* v. *Hanson* both arise under the same statute and involve the same issue. There police officers who had completed the required 20 years of service sought retirement under a police pension fund act. One filed his application on March 31, 1917, and the other in April of that year. Before the pension board acted upon the application, the statute was amended by adding a minimum retirement age of 50, which neither Beutel nor Han-

son had reached. The amending act also carried a provision that no applications for retirement filed after March 1, 1917, were to be considered unless they met the age requirement. The decision in both cases was that the policemen were not entitled to retired pay or pensions.

We have no quarrel with these decisions. The amending act specifically prohibited consideration of the applications as filed and the retirement was never consummated. It does not appear that either policeman raised the question of whether or not the action of the Board in passing on the application was a ministerial one. In the present case, as to the 132 teachers who sought to retire and fulfilled all the requirements therefor but were prevented by the Board of Education, we have the express admission that the Board's action would have been purely ministerial (R. 256, 258).

In *Raines* v. *Board of Trustees Pension Fund, supra,* an act involving teachers' pensions in cities other than Chicago was under consideration. Under that act appellant had made certain contributions and became entitled to a pension upon his retirement in 1927. By an amendment of 1935 he deemed himself entitled to an additional pension of $200.00 per year upon payment of a lump sum of $200.00, which he offered. The Supreme Court of Illinois reversed the case and directed the payment of the additional pension.

The *Beutel, Hanson* and *Raines* cases all have language to the effect that a pension is a gratuity and the *Raines* case goes so far as to say that it is still a gratuity even though contributions are made, so long as the contributions are compulsory. None of the language to this effect in any of these decisions is germane to the points decided. In the *Raines case* the language of the opinion with respect to voluntary contributions is of interest as applied to appellants here, who parted with a different, but we think entirely adequate, kind of consideration. The Court said, 365 Ill. 610, 616-617:

"The relations between voluntary contributors and the sovereign being contractual, it follows that the rights created are not measured by the rights of pensioners. They are similar, and amount, in effect, to insurance contracts providing annuities upon maturity of the contract or policy of insurance. The basis of such annuities is the same as the basis of any other contract. The consideration is the offer of the sovereign, the acceptance of the offer and performance of its terms. It is a familiar principle that the legislature possesses all powers not prohibited by the limitations of the constitution. Among such powers is the power to contract, where the contract is not within any constitutional inhibition or against public policy. The right of the State to contract for the payment of annuities to its officers and employees under prescribed conditions is not challenged, and has been repeatedly upheld. * * * The benefits to be derived are not gratuities from public funds for past services, and therefore an increase in such benefits in consideration of further contributions does not violate the constitutional provision prohibiting extra pay for past services. The fact that the contributions may be smaller than the payments required by insurance companies under experience and mortality tables to mature policies for similar amounts does not detract from the contractual relation. The question of the wisdom of such rates is not within the province of the courts, but is a matter for the consideration of the legislature."

In our original brief, pages 43-52, we discussed at some length the Illinois cases and showed the confusion into which the Supreme Court of Illinois had fallen. In one line of cases a pension or annuity (no distinction is made by the Court between the two terms) is regarded solely as a gratuity, terminable at the will of the legislature. In another line of decisions which overlaps and on the whole is later than the first, the vesting of rights is recognized upon the retirement or death of the public servant.

It would be needless duplication to repeat the survey of the cases there made but we desire again to call atten-

tion to the last case before the decision in the case at bar, *De Wolf* v. *Bowley,* 355 Ill. 530 (1934). There a judge retired, having served more than 24 years. Sometime after his retirement he reached the age of 65 and brought suit against the County authorities under a judges pension act of July 1, 1919, applicable to judges of all courts of record to "receive annually a pension during the remainder of his life" equal to one-half his compensation for his last year of service. The pension was to be paid by State, County or City, respectively, out of moneys not otherwise appropriated, in the same manner as active salaries.

The judge in *De Wolf* v. *Bowley* made no contribution at any time to any pension fund. The Act of July 1, 1919, did not set up any fund and did not require any payments by the judges, during or after their terms of office. Nevertheless the Supreme Court of Illinois held that this judge was entitled to draw the pension, that it was not a gratuity and that, page 533:

> "Such pensions, generally, are not considered donations or gratuities but inducements to continued service".

We cannot reconcile the expressions in the Illinois decisions but we conclude that the reasoned view is that embodied in the quotation from *Roddy* v. *Valentine,* 268 N. Y. 228, 231, 232, which appears in our original brief pages 39-40. In that case there were compulsory but not voluntary contributions but their presence or absence was not a factor in the decision upholding contract rights. Nor have we discovered in the brief for appellees any reasoning which effectively answers or contradicts *Dillon on Municipal Corporations,* 5th Edition, Sec. 431, which has been widely cited and relied upon in the decisions. He says:

> "Until the particular event should happen upon which the money, or a part of it, is to be paid, there is no vested right in the officer to such payment. His interest in the fund is, until then, a mere expectancy

> created by the law and liable to be revoked or destroyed by the same authority. But when the particular event has happened upon which the money or a part of it is to be paid, the beneficiary of the pension under the pension system acquires, it has been held, a vested right and it is not competent for the legislature or any other authority to deprive him of that vested right. But the existence of a vested right is dependent upon statutory provisions conferring the pension without qualification and without any reserved right to terminate it. If the statute reserves the power to the local authorities to discontinue the pension in their discretion, the beneficiary does not acquire a vested right in it."

The cases cited in our main brief from eleven different states each definitely repudiates the gratuity theory as applied to a retirement annuity such as provided for in the Miller Act. In *Roddy* v. *Valentine, supra,* it was held by the New York Court of Appeals, "the concept embodied in the word pension has gone far beyond the original idea of a bounty or gratuity." In *McGovern* v. *Retirement Board, supra,* the Pennsylvania Supreme Court distinguished carefully between "retirement annuities" defined by them as "retirement pay" or "adjusted compensation" on the one hand and "gratuitous" pensions on the other. In *Klench* v. *Board of Pension Commissioners,* 79 Cal. App. 171, cited in the later California Supreme Court decisions on the subject, it is held as to those in the service at the time the statute was enacted, "the pension provisions became a part of the contemplated compensation for those services and was in a sense a part of the contract of employment itself." It necessarily follows from these views that, as stated in the *Roddy Case, supra,* where "the statutory conditions for retirement * * * have been met * * * the interest becomes vested and takes on the attributes of a contract". This doctrine applies to all of the appellants and under it they have each acquired contractual rights.

The conditions imposed and the offer extended by the Miller Act are expressed in clear positive language. Appellants, having complied with the requirements of that Act, we submit that such compliance by each constituted a contract with the State, the obligations of which could not legally be impaired by subsequent legislation. The rights of appellants to life annuities thereupon became vested property rights of which they could not legally be deprived.

Respectfully submitted,

ALLAN J. CARTER,
189 West Madison Street,
Chicago, Illinois,
Counsel for Appellants.

ALFRED R. BATES,
C. T. B. GOODSPEED,
KARL D. LOOS,
PRESTON B. KAVANAGH,
Of Counsel.

BLANK

PAGE

BLANK

PAGE

INDEX.

Page

Argument:

Prior briefs adopted 1

1. The question for decision is whether appellants are protected by contracts with a State 1

2. Brief discussion of additional points raised by Appellees 4

(a) Reply to Appellees' position that Illinois decisions holding pensions gratuitous should be read into the contracts 5

(b) No sovereign power is vested in State of Illinois under which these contracts can be impaired 10

Conclusion 14

TABLE OF CASES.

Beer Company v. Massachusetts, 97 U. S. 25 11
C. B. & Q. R. R. Co. v. Nebraska, 170 U. S. 57 11
De Wolf v. Bowley, 355 Ill. 530 8
Eddy v. Morgan, 216 Ill. 437 ..... 8, 10
Home Building & Loan Assn. v. Blaisdell, 290 U. S. 398 ..... 11, 12
Lynch v. United States, 292 U. S. 571 ..... 13, 14
Matter of Wright v. Craig, 202 App. Div. 684, 195 N. Y. S. 391, 234 N. Y. 548 5
New Jersey v. Yard, 95 U. S. 104 11
People v. Abbott, 274 Ill. 380 ..... 8, 9
People v. Hausen, 330 Ill. 79 10
Porter v. Loehr, 332 Ill. 353 ..... 8, 9, 10
Robertson v. Miller, 276 U. S. 174 4
Roddy v. Valentine, 268 N. Y. 228 7
Sproles v. Binford, 286 U. S. 374 11
Stone v. Mississippi, 101 U. S. 814 11
Tilbert v. Eagle Lock Co., 116 Conn. 357 5
Walton v. Cotton, 19 How. 355 7
Woodruff v. Trapnell, 10 How. 190 11

CONSTITUTIONS, STATUTES AND OTHER AUTHORITIES.

Page

U. S. Constitution, Art. I, Sec. 10, 14th Amendment.. 2
Illinois Constitution, Art. IV, Sec. 19..... 9
Miller Act as amended in 1927:

Smith-Hurd Ill. Rev. Stats. 1933, Chap. 122, Pars. 614a, 614b, 614c, page 2725.....2, 3, 4, 5, 6, 7, 8, 14

1935 Amendment to Miller Act:
Ill. State Bar Stats. 1935, Chap, 122, Par. 269 (1) (2) 3, 13, 15

Act to provide for * * * a park employees' annuity and benefit fund; Ill. Session Laws, 1919, p. 785..... 6
Act to provide municipal employees' annuity and benefit fund; Ill. Session Laws, 1921, p. 205..... 6
Act to provide a policemen's annuity and benefit fund; Ill. Session Laws, 1921, p. 262 6
Act to provide a park employees annuity and benefit fund; Ill. Session Laws, 1921, p. 592..... 6
Act to provide county employees' annuity and benefit fund; Ill. Session Laws, 1925, p. 266..... 6
Dillon on Municipal Corporations, 5th Ed., Vol. I, Sec. 431, Note 1 8
Dillon on Munic. Corps., 5 Ed., Vol. 1, Sec. 431, p. 756, Note 1 8

IN THE

Supreme Court of the United States

OCTOBER TERM, 1937.

No. 5.

CHESTER C. DODGE, CATHERINE L. BAIRD, AZILE B. REYNOLDS, ET AL., *Appellants*,

v.

BOARD OF EDUCATION OF THE CITY OF CHICAGO, ET AL., *Appellees*.

REPLY BRIEF FOR APPELLANTS ON REARGUMENT.

Upon reargument of this case appellants adopt the brief and reply brief heretofore filed by them. The brief here presented is intended as a short restatement and discussion of the principles involved and as an answer to certain arguments now advanced by the appellees.

1. The Question for Decision is Whether Appellants Are Protected by Contracts With a State.

The point at issue remains a narrow one. It is whether or not these appellants acquired vested rights under an Illinois statute of 1926 and 1927, known as the Miller Act, that

could not constitutionally be destroyed by later legislation. The Miller Act appears in full on pages 62 to 65 of Appellants' original brief and on pages 87 to 90 of Appellees' brief on reargument.

If these vested rights were acquired under the Miller Act, they arose by reason of an offer on the part of the State and acceptance by the appellants, thereby creating contracts entitled to protection under Section 10 of Article I of the Federal Constitution and of the Fourteenth Amendment thereto. The jurisdictional question is one with the merits. If there are existing contracts that have been infringed, this Court has power to consider and decide the case and set aside the unlawful act of the State legislature which impaired them. If the rights of appellants have not vested, they are not within the area protected by the Constitution and this Court may properly dismiss the appeal. There are no collateral questions relating to jurisdiction since, as shown by our original jurisdictional statement and brief, all facts have been properly raised and presented, here and below.

The Miller Act, according to its title, provided for the compulsory retirement of teachers, principals, district superintendents and assistant superintendents and the payment to them of retirement annuities. Under Section 1 of the Act retirement was to begin at age 75 and to continue at a progressively earlier age until, after five years, all retirements were to be at age 70. Section 2 provided that:

> "Each person so retired from active service who served in the public schools of such City for 20 or more years prior to such retirement shall be paid the sum of Fifteen Hundred Dollars ($1500) *annually and for life* from the date of such retirement from the money derived from the general tax levy for educational purposes: * * *" (Italics ours.)

The Act was amended in 1927 to provide in its title for both compulsory and voluntary retirement of teachers, principals, district superintendents and assistant superin-

tendents and for the payment of retirement annuities. Section 3 was added at that time authorizing voluntary retirement from 65 to 70 years of age at "annuities for life" of from One Thousand Dollars to Fifteen Hundred Dollars per year.

The appellants here are members of the classes described in Sections 1, 2 and 3 of the Miller Act. The great majority (651) retired voluntarily pursuant to the Act at ages ranging from 65 to 70. Of the remainder, 132 sought to retire voluntarily under the Act and the consent of the Board of Education of Chicago was withheld, although that consent is admitted to have been purely ministerial. (R. 256.) The same admission was made by counsel for appellees during the course of the first argument before this Court. 162 appellants of the age of 70 or over were retired under the compulsory provisions of the Act at Fifteen Hundred Dollars a year for life.

The Miller Act was adopted by the Illinois Legislature upon the recommendation and at the insistence of the Chicago Board of Education and its superintendent of schools, for reasons which they deemed adequate and impelling. (R. 51-53.) The 1927 amendment to the Miller Act providing for voluntary retirement was also recommended to the Legislature by the Superintendent of Schools and Board of Education of the City of Chicago and the Superintendent's report states that "The amendment will give the schools relief from incapacitated teachers over 60 years of age without additional cost, as new teachers taking the place of those retiring will begin at lower steps of salary schedule. Therefore, salary of new teachers and pension under amendment would be less than salary of old teacher retiring under amendment." (R. 65.)

By act of July 12, 1935, the Illinois Legislature abolished voluntary retirement of teachers, lowered the compulsory retirement age to 65 and provided that "each person so retired from service shall be paid the sum of Five Hundred Dollars ($500.00) annually and for life from the date of such

retirement from the money derived from the general tax levy for educational purposes." * * * (R. 73.)

The Supreme Court of Illinois in its opinion in this case, applied the 1935 Act retroactively to curtail the retirement annuities of appellants to Five Hundred Dollars annually. By its decision, which upheld the action of the Board of Education, appellants lost from one-half to two-thirds of the annual annuities to which they were entitled under the Miller Act. This, we submit, was a clear impairment of appellants' rights and if these rights were vested by reason of contracts with the State, no further proof of violation of the Federal Constitution is necessary. The question thus becomes one of application of the principles of contract law to the relationship entered into between appellants and the State of Illinois, with due regard for the rights of both individuals and sovereign.

Appellants have never contended that the passage of the Miller Act, in and of itself, entitled them to claim any vested rights. Such rights arose at the time of retirement and acceptance of the annuities which the Act offered. Upon retirement each appellant, having served the required period, had fully performed his or her part of the contract in accordance with the terms of the offer, and nothing then remained that he or she could do. It is the State which has failed of performance and which has attempted to retain a substantial amount theretofore earned by each of appellants in violation of its contract and of the Federal Constitution. *Robertson* v. *Miller*, 276 U. S. 174.

2. Brief Discussion of Additional Points Raised by the Appellees.

The principal argument heretofore advanced by appellees in this Court and in the courts below has been that no contract was offered to the teachers and that there could, therefore, be no acceptance. The reason given was that, in law, the offer of a pension was the offer of a gratuity which could be withdrawn at the will of the sovereign. This point

has been thoroughly discussed in the briefs for both sides and we refer to our original brief and reply brief for arguments sustaining our position that contracts were created based upon adequate consideration. Additional cases which recognize the vesting of contract rights although no contributions compulsory or otherwise were made by the employees are:

Matter of Wright v. *Craig*, 202 App. Div. 684, 195 N. Y. S. 391, affirmed without opinion 234 N. Y. 548.
Tilbert v. *Eagle Lock Co.*, 116 Conn. 357.

The appellees now suggest that if the Miller Act did in fact offer contracts to the appellants which were accepted by them, such contracts must be held to be something less than binding upon the State for a number of reasons, chief of which are that the law in Illinois at the time of the passage of the Miller Act must be read into the contracts, and that when so read, the contracts cannot be construed to be binding (Appellees brief on reargument, point IV, pages 68-77); and that either the reserved powers or the police powers which the State was entitled to exercise, gave it the right to amend the contract at will, even though such action was highly detrimental to appellants. (Appellees brief on reargument, point V, pages 78-82.)

(a) Reply to Appellees' Position that Illinois Decisions Declaring Pensions to be Gratuities Should Be Read Into the Contracts Between Appellants and the State.

Appellees devote one main heading of their argument to the proposition, first, that pensions in Illinois were always deemed by the courts of that State to be gratuities or bounties, terminable at will and, second, that the legislature must have known the state of the law and included it by implication in the Miller Act.

The inclusion must be by implication since it is certainly not expressed. There are no words of reservation in the Miller Act and the "annuities" there provided are to be

paid "for life". It seems to us that the argument falls for two reasons and that the plain words of the Act must stand.

The Miller Act, contrary to most of the Illinois Acts that preceded, it, did not use the word "pension". It used the word "annuity". The Legislature chose to adopt a terminology based on contract rather than on gift and one which implied a consideration received as well as offered.

Prior to 1919 Illinois laws concerning retirement allowances to public employees were denominated pension laws and the allowance made was always referred to in the Act as a pension, except in certain laws relating to teachers. In 1919 the Legislature adopted an Act entitled "An Act to Provide for * * * a Park Employees, Annuity and Benefit Fund" (Ill. Sess. Laws 1919, p. 785). At the next session of the Illinois Legislature in 1921 three entirely new laws were passed providing for retirement allowances to public employees which referred to such allowances in the title and body of the Acts as "annuities". One related to "a Municipal Employees' Annuity and Benefit Fund" (Ill. Sess. Laws 1921, p. 205); another to "a Policemen's Annuity and Benefit Fund" (Ill. Sess. Laws 1921, p. 262), and the third to "a Park Employees' Annuity and Benefit Fund" (Ill. Sess. Laws 1921, p. 592.)

No new Acts providing for retirement allowances were passed by the 1923 session of the Illinois Legislature. In the 1925 Session two new Annuity Acts were passed, one, the original Miller Act, which did not become effective until it was approved by the Governor May 19, 1926, and the other, a "County Employees' Annuity and Benefit Fund" Act (Ill. Sess. Laws 1925, p. 266).

The Supreme Court of Illinois had not passed upon any statute involving "annuities" of this type at the time of the adoption of the original Miller Act. It may be inferred that the Legislature deliberately sought to create a new kind of retirement allowance, distinguished from the old by being an annuity rather than a pension.

The other fallacy in the argument of appellees is that the law of Illinois upon this subject is clear. As we have heretofore pointed out and need not here repeat in detail, the law of Illinois has for years been in confusion upon the question of the legal effect of a statute creating pensions. Under these circumstances the legislature, if it sought to include court decisions upon the subject by implication, merely tended to foster the confusion already existing. Such a motive should not be imputed to it where the words of the Miller Act are clear and unambiguous and reach an equitable result in accordance with a plain meaning.

The early cases had reason to consider the pensions of that day as mere gratuities. A typical example is the case of *Walton* v. *Cotton,* 19 How. 355. There an Act of Congress of 1832 created certain pensions for Revolutionary soldiers and their descendants. Such a grant, made long after all services had been performed, could be nothing but a gift which might be revoked at will.

However, as now used, the word pension more commonly embraces a newer concept of an offer held out in advance of retirement, of an additional sum to be paid when the employee's term of regular service has been faithfully completed. *Roddy* v. *Valentine,* 268 N. Y. 228, 231. It is an inducement for the performance of future services in the shape of compensation withheld and it benefits employer and employee alike by assuring a continuity of employment, retirement at an age deemed by the employer to be most advantageous to him, and security thereafter for the employee during his last years. A pension offered under such circumstances is received not as a gift upon retirement but as a right which has been earned.

Adequate social planning today requires that those who have given the productive portion of their lives to a task—whether governmental or private—should not be discarded without adequate provision for their future welfare. So viewed, the Miller Act with its annuities beginning at 65 or

70 after 20 or 25 years of teaching is substantially in line with modern thought. Public policy which includes the promotion of the general welfare requires that its purpose be not allowed to fail if a way can be found to preserve it.

It is easy to understand how the Illinois courts may have followed the theory that a pension is a bounty, springing from the graciousness and appreciation of the sovereign, without distinguishing between the type of pension which is a gratuity granted solely for past services after retirement and the type of pension which necessarily creates a contract because it includes an adequate legal consideration. The first statement on this subject appearing in an Illinois opinion was dictum. (*Eddy* v. *Morgan*, 216 Ill. 437, 439) and was so characterized by Dillon in his work on Municipal Corporations, 5 Ed., Vol. I, Sec. 431, p. 756, Note 1. It is more difficult to understand how the Supreme Court of Illinois could, side by side with these gratuity cases, decide others like *People* v. *Abbott*, 274 Ill. 380, *Porter* v. *Loehr*, 332 Ill. 353 and *DeWolf* v. *Bowley*, 355 Ill. 530, which plainly hold that the rights of the employee vest at the time of retirement. Once vested, a contract is created which cannot be destroyed, wholly or in part, by subsquent legislation.

Within two years after the passage of the original Miller Act and within one year after the passage of the 1927 amendment providing for voluntary retirement there was a collision in the Supreme Court of Illinois between these two theories—the one that pensions are mere bounties or gratuities and the other, that the acceptance of pensions after the periods of service and retirement create vested contract rights.

This conflict and the manner in which it was resolved by the Supreme Court of Illinois in the case of *Porter* v. *Loehr*, *supra* (decided in October 1928; rehearing denied in December 1928) clearly appears from the opinion of that Court which adopted the theory of *People* v. *Abbott*, *supra*, and from the petition for rehearing in *Porter* v. *Loehr* which was denied and which relied almost entirely on the gratuity

theory as shown by a certified copy of that petition and nine printed copies which have been lodged with the Clerk of this Court.

In *Porter* v. *Loehr, supra,* a taxpaper sought to enjoin a policemen's pension board from increasing the pensions of policemen previously retired under an amendment to the Pension Act which did not become effective until after their retirement. The amendment by express language provided that the increases were to apply to all policemen previously retired. The lower court dismissed the bill and the Supreme Court of Illinois reversed the case directing the lower court to enter a decree holding that the additional payments to policemen previously retired was unconstitutional on the ground that such payments were "a gift or gratuity".

A petition for rehearing was then filed which the Supreme Court of Illinois denied, abiding by its original decision based on the case of *People* v. *Abbott, supra,* and the theory there set forth, that a pension is in the nature of deferred compensation and that rights under a pension act vest upon retirement but that any increase in pension after retirement could not be supported by consideration and was, therefore, a gratuity and bad under the State Constitution. Section 19, Article IV of the Illinois Constitution provides:

> "The General Assembly shall never grant or authorize extra compensation, fee or allowance to any public officer, agent, servant or contractor, after service has been rendered or a contract made, * * *".

The appellees in *Porter* v. *Loehr, supra,* contended in their petition for a rehearing that a pension was a gratuity or bounty and that therefore the Legislature could, as it saw fit, either increase or decrease pensions after termination of services and retirement. They asserted:

> "A pension must be either a 'bounty', or 'compensation' arising out of contract. It cannot be both." (Point VIII—Petition for Rehearing.)
>
> "* * * In Illinois a pension is held to be not 'compensation and *ipso facto* an increase of pension can-

not be 'extra compensation'. Pensions are a bounty springing from the graciousness of Government. They are not rooted in contract nor bestowed as 'compensation' or 'allowance' ". (Point IX—Petition for Rehearing.)

In support of these propositions they cited the same seven cases commencing with *Eddy* v. *Morgan,* 216 Ill. 437 and ending with *People* v. *Hansen,* 330 Ill. 79, which are cited at pages 69 and 70 of appellees' brief on reargument in this case to prove the claim there made that the Illinois Supreme Court had always followed the gratuity theory of pensions.

We respectfully submit that the conflict between these two parallel lines of decision was brought to the attention of the Supreme Court of Illinois in *Porter* v. *Loehr* and the facts just recited show that the law on the subject in Illinois was not as stated by appellees in their brief on reargument (page 70) "clear, unequivocal and long established". On the contrary, the gratuity theory as to pensions was repudiated in that case.

(b) No Power is Vested in the State of Illinois, by Virtue of Its Sovereignty to Impair Its Contracts With These Teachers.

Point V of the brief for appellees on reargument stresses the proposition that somehow the State of Illinois possesses power to abrogate contracts offered and accepted for the payment of Fifteen Hundred Dollars a year for life and to create in their stead new contracts of Five Hundred Dollars a year for life. It is suggested that this power is a sovereign power, a police power, or a reserved power, but, we submit that potent as these powers undoubtedly are, none of them can justify the action now sought to be taken.

If it be admitted for the sake of argument that the State has the power and is charged with the duty of providing for the education of its citizens and that this power is sovereign and perhaps a part of the police power, there is still no

excuse for the argument that the State is thereby absolved from responsibility for the observance of its contractual obligations. To hold otherwise, would be to say that the State may disregard every contract from which it derives a benefit as soon as the other party to the contract has performed his or her share of it. The illustration which leaps immediately to the mind is the one where a State would be entitled to repudiate its bonds, purchased by its citizens with their funds, just because the money derived from the sale of the bonds has been expended for a traditional and governmental purpose, let us say, to pay the salaries of State legislators or to build a State university. The proposition contended for is so broad that the contract clause of the Constitution could never be applied in any case where the State is one of the parties to the contract. The Constitution does not permit a State to thus play fast and loose with its citizens. *Woodruff* v. *Trapnell,* 10 How. 190; *New Jersey* v. *Yard,* 95 U. S. 104.

To permit such repudiation of contracts would lead back to the chaos that obtained before the adoption of the contract clause in the Constitution. That situation was pointed out in this Court's opinion in the case of *Home Building & Loan Association* v. *Blaisdell,* 290 U. S. 398, p. 427:

> "The widespread distress following the revolutionary period, and the plight of debtors, had called forth in the States an ignoble array of legislative schemes for the defeat of creditors and the invasion of contractual obligations."

It is true that a State legislature cannot bargain away the public health or the public morals and that there is reserved to it a very real power to interfere with existing contract rights for the protection of the public safety. *Stone* v. *Mississippi,* 101 U. S. 814; *Beer Company* v. *Massachusetts,* 97 U. S. 25; *Chicago, Burlington & Quincy R. R. Co.* v. *Nebraska,* 170 U. S. 57; *Sproles* v. *Binford,* 286 U. S. 374. But when the State assumes to contract in a manner having no

harmful effect upon the public health, public morals, public safety or any other public interest which the State is charged to protect, there is no reservation implied in law which will permit destruction, rescision or essential modification of that contract at the will of only one of the parties to it.

Counsel for appellees cite and rely upon the case of *Home Building & Loan Association* v. *Blaisdell, supra,* in support of their claim of right to modify a contract. (Brief on Reargument, pp. 79, 80.) But that case is very careful to point out the limits beyond which a state cannot go. It stands for the proposition that in an emergency, reserved powers of the State may be exercised to modify the remedy afforded by a contract so long as there is no more than a temporary interference, as it were procedural, with the substantial rights secured by the contract. This Court points out, page 439:

> "Undoubtedly, whatever is reserved of State power must be consistent with the fair intent of the constitutional limitation of that power. The reserved power cannot be construed so as to destroy the limitation, nor is the limitation to be construed to destroy the reserved power in its essential aspects. They must be construed in harmony with each other. This principle precludes a construction which would permit the State to adopt as its policy the repudiation of debts or the destruction of contracts or the denial of means to enforce them. But it does not follow that conditions may not arise in which a temporary restraint of enforcement may be consistent with the spirit and purpose of the constitutional provision and thus be found to be within the range of the reserved power of the State to protect the vital interests of the community."

The interference with a contract which was permitted in the *Blaisdell* case was within reasonable bounds which have been far exceeded here. The attack on the contracts here under consideration by the Illinois Legislature is one which destroys the greater part of its very substance without

bothering with mere remedial forms. If that case is authority in the present controversy, it must be ranged on the side of appellants as a landmark which limits the extent to which a state may tamper with an existing contract.

Finally, the appellees insist that the Act of 1935 drastically reducing the annuities provided under the Miller Act, was justified as an emergency measure in a time of financial depression. The 1935 Act does not purport to be an emergency measure but one of perpetual duration. The record contains nothing in support of this assertion that is properly before the Court. There are allegations in the answer of the Chicago Board of Education on this subject, beginning at R. 115, which were never supported by any proof. If common knowledge and experience are called in support of this proposition it is apparent that common knowledge tells us that by July, 1935, the so-called depression had passed.

The Act of 1935 was undoubtedly a money saving measure since it took away the major part of the annuities which had theretofore been paid to the elderly retired teachers. This it purported to do not for a time but for all time and we maintain that the legislature lacked the power which it was attempting to exercise. "To abrogate contracts, in the attempt to lessen government expenditure, would be not the practice of economy but an act of repudiation". *Lynch* v. *United States*, 292 U. S. 571, 580. The whole quotation upon this subject from the Lynch case is very apt. It applies particularly to contracts entered into by the United States but is of equal application to contracts with a State. The opinion states as follows, pages 579, 580:

> "The Solicitor General does not suggest, either in brief or argument, that there were supervening conditions which authorized Congress to abrogate these contracts in the exercise of the police or any other power. The title of the Act of March 20, 1933, repels any such suggestion. Although popularly known as the Economy Act, it is entitled an "Act to maintain the credit of

the United States.'' Punctilious fulfillment of contractual obligations is essential to the maintenance of the credit of public as well as private debtors. No doubt there was in March, 1933, great need of economy. In the administration of all government business economy had become urgent because of lessened revenues and the heavy obligations to be issued in the hope of relieving widespread distress. Congress was free to reduce gratuities deemed excessive. But Congress was without power to reduce expenditures by abrogating contractual obligations of the United States. To abrogate contracts, in the attempt to lessen government expenditure, would be not the practice of economy, but an act of repudiation. 'The United States are as much bound by their contracts as are individuals. If they repudiate their obligations, it is as much repudiation, with all the wrong and reproach that term implies, as it would be if the repudiator had been a State or a municipality or a citizen.' *Sinking-Fund Cases,* 99 U. S. 700, 719.''

If the reasons stated by the appellees are sufficient to bring the Miller Act within the police or other reserved sovereign powers of the State, any legislation by which a saving of taxes is made, regardless of whose contract it violates, can be justified as in aid of the public welfare. The argument defeats itself by pointing directly to an absurd abuse of power.

CONCLUSION.

We ask this Court to hold that appellants secured and retained vested contract rights in their annuities and that the Act of the Illinois Legislature of July 12, 1935, is unconstitutional and void as applied to these appellants for the reason that it substantially impairs these rights. It follows

that the judgment of the Court below should be reversed and the cause remanded.

Respectfully submitted,

ALLAN J. CARTER,
189 W. Madison St.,
Chicago, Illinois,
Counsel for Appellants.

ALFRED R. BATES,
C. T. B. GOODSPEED,
KARL D. LOOS,
PRESTON B. KAVANAGH,
Of Counsel.

BLANK

PAGE

FILE COPY

Office - Supreme Court, U. S.
FILED
FEB 5 1937
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. [redacted] 5

CHESTER C. DODGE, CATHERINE L. BAIRD, AZILE B. REYNOLDS, ET AL.,

Appellants,

vs.

BOARD OF EDUCATION OF THE CITY OF CHICAGO ET AL.,

Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM.

RICHARD S. FOLSOM,
FRANK S. RIGHEIMER,
Attorneys for Board of Education of City of Chicago;
BARNET HODES,
Corporation Counsel of City of Chicago.

RALPH W. CONDEE,
FRANK R. SCHNEBERGER,
Of counsel.

BLANK

PAGE

INDEX.

Subject Index.

	Page
Statement opposing jurisdiction	1
Statement of the case	2
There is no federal question before this Court for its determination	6
The Federal question attempted to be asserted is foreclosed by previous decisions of this Court	8
Motion to dismiss or affirm	19

Table of Cases Cited.

Atkin v. *Kansas,* 191 U. S. 207, 48 L. Ed. 148	14
Bier v. *McGehee,* 148 U. S. 137, 37 L. Ed. 397	7
Central Land Co. v. *Laidley,* 159 U. S. 103, 40 L. Ed. 91	7
Dismuke v. *United States,* 297 U. S. 167, 80 L. Ed. 375	10
Frisbie v. *United States,* 157 U. S. 160, 39 L. Ed. 657	9
Heim v. *McCall,* 239 U. S. 175, 60 L. Ed. 206	15
Keime v. *Community High School District,* 348 Ill. 228	13
Kinnare v. *City of Chicago,* 171 Ill. 332	12
Lindstrom v. *City of Chicago,* 331 Ill. 144	13
Lynch v. *United States,* 292 U. S. 571, 78 L. Ed. 1434	10
New Orleans v. *New Orleans Water Works Co.,* 142 U. S. 79, 35 L. Ed. 943	7
Pennie v. *Reiss,* 132 U. S. 464, 33 L. Ed. 426	8
United States v. *Teller,* 107 U. S. 64, 27 L. Ed. 352	8

Statutes Cited.

Constitution of the State of Illinois, Article VIII, Section 1 (Smith-Hurd R. S. 1935, p. 67)	12
Constitution of the United States, Article I, Section 10	20
Constitution of the United States, Fourteenth Amendment	14, 20
Miller Act of the Illinois Legislature of 1926, effective May 19, 1926 and Section 3 thereof as amended in 1927, and as further amended July 12, 1935 (Par. 614, Chap. 122, Smith-Hurd Illinois R. S. 1935)	4, 5
Pension Act of Illinois of 1909 (Section 152-165, both inclusive, School Law, par. 175-190; Chap. 122, Smith-Hurd R. S. 1935)	2

BLANK

PAGE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 713

CHESTER C. DODGE, CATHERINE L. BAIRD, AZILE B. REYNOLDS, ET AL.,

Appellants,

vs.

BOARD OF EDUCATION OF THE CITY OF CHICAGO ET AL.,

Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

STATEMENT BY APPELLEES OF MATTERS AND GROUNDS MAKING AGAINST THE JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES.

MAY IT PLEASE THE COURT:

Appellees, Board of Education of the City of Chicago, James B. McCahey, Ernst Buehler, Irwin Walker, Paul Drymalski, Charles W. Fry, Joseph P. Savage, William D. McJunkin, Harry W. Solomon, Joseph J. Salat, Mrs. W. S. Hefferan, Frank H. Landmesser, Harry H. Brackett, City of Chicago, Edward J. Kelly, Gustave A. Brand and Robert

Upham, respectfully present to the court the following matters and grounds making against the jurisdiction of the Supreme Court of the United States on the appeal of appellants from the Supreme Court of Illinois to the Supreme Court of the United States.

A Statement of the Case.

The one issue involved in this case was and is—did the act of the legislature of the State of Illinois commonly called the Miller Act of 1926 as amended in 1927, grant to Chicago teachers vested property rights in future installments of the pensions created by that act?

Chicago's retired teachers are the recipients of two pensions; one under the Teachers' Pension Act of 1909 and the other under the Miller Act of 1926, as revised.

The Pension Act of 1909 (not involved herein) gives a pension of $1,000.00 per annum to each teacher who retired after serving the schools for a specified number of years. The fund to provide payment of these pensions is maintained by contributions from the teachers and a special levy of an annual tax for that purpose. (Sec. 152-165, both inclusive, School Law, Par. 175-190; Chap. 122, Smith-Hurd R. S. 1935.) These pensions under the 1909 Act have been continuous and regular since the law was passed in 1909, and have never been diminished.

The second pension law (the Miller Act) enacted by the legislature of Illinois became effective May 19, 1926. It is a complete and separate act not connected with the Pension Act of 1909 and in no way affects it. The Miller Act provided for the compulsory retirement of teachers at age 70, and gave a pension of $1,500.00 per annum to each teacher so retired. This pension was given in addition to the $1,000.00 per annum pension provided for each teacher under the regular Teachers' Pension Act (Act of 1909) (R. 72).

The additional pensions of $1,500.00 paid to retired teach-

ers under the Miller Act were paid, as stated in the Act itself, solely "from the money derived from the general tax levy for educational purposes," which is the source of revenue provided by law for the payment of salaries of teachers and others actively engaged in operating the schools of Chicago.

To this second and additional pension the teachers contribute nothing.

In 1927 the Miller Act was amended by adding Section 3, which permitted the voluntary retirement of teachers and provided for pensions on a sliding scale ranging from $1,000.00 to $1,500.00 per year to teachers voluntarily retiring between the ages of 65 and 70 (R. 84-85).

The financial depression through which we have been passing seriously affected the revenues of the Board of Education. Tax collections were and are very bad due also to the depression. Through necessity, and in order to keep the schools open as required by law, the appellee, Board of Education, after a careful consideration of its financial condition, in 1933 reduced the school year from 10 to 9 months, the minimum allowed by law (R. 153); made reductions of 23½% in salaries of all of its active employees, including teachers (R. 143). It took numerous other steps in the interests of economy in order to operate within its income; mortgaged its real estate in 1934 to secure the payment of a loan of $22,500,000.00 from the Reconstruction Finance Corporation in order to pay teachers their unpaid and past due salaries, and then examined into the amount being paid out of its educational fund for pensions to retired teachers rendering no service to the School System. It ascertained the following:

Approximately 70% of the teachers in the School System are elementary (grammar school) teachers. Under the necessary economies the maximum salary of an elementary school teacher was reduced from $2,500.00 to $1,912.50 and

the lower group salary of an elementary teacher was reduced from $1,500.00 to $1,127.50 (R. 137). Neither the pension paid from the Teachers' Pension Fund under the Act of 1909 nor pensions paid under the Miller Law (under the Act of 1927) by the Board of Education were reduced, with the result that a retired teacher received two pensions aggregating $2,500.00 per annum or $587.50 more than the maximum salary and $1,372.50 more than the lower group teachers receive for conducting classrooms daily during the school year.

In 1926, when the Miller Act became a law, the cost to the Board for annuity pensions was $12,000.00 (R. 136). In a period of eight years thereafter, the expenditures for that purpose increased each year by leaps and bounds until in 1934 the Board expended $1,000,906.87 for such Miller Law pensions, an increase of nearly 1,000%, thereby depriving the educational fund of this amount which otherwise could be used for current salaries and educational expenses (R. 137, 142).

These facts were presented to the legislature, together with the fact that the economy to be effected by reducing the future installments of Miller Law pensions, payable to retired teachers, already receiving substantial pensions from the Teachers' Pension Fund, would enable the appellee, Board of Education, to continue to maintain the efficient standard of the schools and keep them open nine months of the year as required by law, and maintain salaries at the reduced rate and also give proper consideration to the already over-burdened taxpayers (R. 141-143).

By the amendment to the Miller Act effective July 12, 1935, the provision for voluntary retirement of teachers provided for in Section 3 was repealed; the compulsory retirement age of teachers was fixed at 65 years, and the Miller Act pensions were reduced to $500.00 per annum (Par.

614, Chap. 122, Smith-Hurd Ill. R. S. 1935) (R. 94). This action remedied the evil of the continuously increasing expense to the educational fund for a non-educational purpose, and corrected the unjust situation created by excessive, gratuitous payments of hundreds of dollars made to each retired teacher above the maximum salary of active elementary teachers. As a result the total sums paid from the two pension acts to retired teachers is $1,000.00 per annum from the regular Teachers' Pension Fund, plus $500.00 per annum paid pursuant to the Miller Act from the educational fund, totalling $1,500.00.

Appellants contend that the Miller Act in existence at the time they retired or at the time they made application for retirement, providing for the payment of $1,500.00 per annum, constituted a contract between themselves and the State, and thereby granted them vested property rights in future installments of pensions.

There is no contract pleaded or in evidence, nor did the Miller Act create or provide any fund, nor did any appellant contribute to any fund in which a vested right or interest is claimed or could be claimed under the Miller Act. No such fund exists.

The Miller Act is a local law, enacted to aid the State in performing a purely governmental function, the doing of a public work, namely, the maintenance of the public schools.

That the Supreme Court of the United States may properly decline to take jurisdiction of the appeal will be apparent from an inspection of the record and a consideration of the following grounds making against the jurisdiction of that court.

I.

There is no Federal question before this Honorable Court for its determination. Appellants had no contract that could have been impaired, nor had they any vested property rights that could have been taken without due process of law.

The question whether the subsequent act of the legislature (Miller Act, 1935) referred to and set forth in appellants' jurisdictional statement impaired the obligation of alleged contracts for payment of pensions for life was not an issue. The defense was, and will be before this Honorable Court if taken, that the appellants had no contract which under any circumstances could be impaired, nor any vested property rights which could have been taken without due process of law.

The Supreme Court of Illinois in its opinion briefly stated the issues that were before it for its determination, and said:

> "It is stated by counsel for appellants in their reply brief: 'Appellants' case rests upon the proposition that they have vested property rights to the payment of future installments of annuities on the basis fixed by the law at the time they retired or being entitled to retire made application for retirement.' "

In determining this question, the Court said:

> "A right to be within the protection of the Constitution must be a vested right. It must be something more than a mere expectancy based upon an anticipated continuance of an existing law. If before rights become vested in particular individuals the convenience of the State induces amendments or repeal, such individuals have no cause to complain."

Continuing, the Court said:

> "The decisions of this court have uniformly been that pensions are not based upon contract but are mere expectancies based upon anticipated continuance of an existing law, and that future installments of pensions are not vested property rights. It follows that the State may reduce future installments of pensions without violating the provisions of the State or Federal Constitution."

We respectfully submit that appellants' contention that this Court should take jurisdiction merely because they have asserted and argued in the lower court a purported federal constitutional issue, is not sufficient. The bare averment of a federal question is not sufficient. This was determined by this Honorable Court in the case of *New Orleans* v. *New Orleans Water Works Co.*, 142 U. S. 79 (35 L. Ed. 943), wherein this Court held (page 88):

> "Applying the principle of this decision to the present case, we think that before we can be asked to determine whether a statute has impaired the obligation of a contract, it should appear that there was a legal contract subject to impairment, and some ground to believe that it has been impaired; and to constitute a violation of the provision against depriving a person of his property without due process of law, it should appear that such person has a property in the particular thing for which he is alleged to have been deprived."

To the same effect is *Bier* v. *McGehee*, 148 U. S. 137 (37 L. Ed. 397) and *Central Land Co.* v. *Laidley*, 159 U. S. 103 (40 L. Ed. 91).

The alleged Federal questions not being based upon any contract, and the Supreme Court of Illinois having held that the Miller Law created no vested rights, we respect-

fully pray that the Supreme Court of the United States will not take this case on appeal.

II.

The Federal question attempted to be asserted is foreclosed by previous United States Supreme Court decisions.

(a) This Honorable Court has repeatedly determined that pensions are mere bounties of the Government which the Government can give, withhold or recall in its discretion. This was held to be the law in *United States* v. *Teller*, 107 U. S. 64 (27 L. Ed. 352), a case involving a Federal pension. The Court in so holding, on page 68 said:

> "* * * No pensioner has a vested legal right to his pension. Pensions are the bounties of the Government, which Congress has the right to give, withhold, distribute or recall, at its discretion. Walton *v.* Cotton, 19 How., 355 (60 U. S., XV, 659)."

Under the Miller Law presented to this Honorable Court for its determination by this appeal, the pensions, although in the act called annuities, are payable out of taxes levied for educational purposes and not out of any fund created by the act, or otherwise, to which the teachers, recipients of the pensions, contribute, or into which deductions from their salaries are paid. The pension is payable annually and is not a lump sum pension payable on retirement. No installments of pensions were past due and unpaid when the 1935 amendment complained of became effective.

In *Pennie* v. *Reiss*, 132 U. S. 464 (33 L. Ed. 426), a pension law of the State of California was before this Honorable Court. That law created a fund termed the Police Life and Health Insurance Fund, out of which the pensions were to be paid. The statute required that two dollars a month be deducted from the salaries and paid into the fund. It was first contended that the fund created was public money,

but the plaintiff changed his position and contended that the fund was private money accumulated from the contributions of the members of the police force. The act provided that upon the death of one of the contributors there shall be paid out of said Health and Life Insurance Fund to the legal representative of the deceased person the sum of one thousand dollars, and in case of resignation due to bad health or bodily infirmity, there should be paid to the contributor the amount of the principal that he may have contributed to the fund. The Court in construing this statute, on page 471 said:

> "* * * It requires no argument or citation of authorities to show that, in making a disposition of a fund of that character, previous to the happening of one of the events mentioned, the State impaired no absolute right of property in the police officer. The direction of the State, that the fund should be one for the benefit of the police officer or his representative, under certain conditions, was subject to change or revocation at any time, at the will of the Legislature. There was no contract on the part of the State that its disposition should always continue as originally provided. Until the particular event should happen upon which the money or a part of it was to be paid, there was no vested right in the officer to such payment. His interest in the fund was, until then, a mere expectancy created by the law, and liable to be revoked or destroyed by the same authority. The law of April 1, 1878, having been repealed before the death of the intestate, his expectancy became impossible of realization; the money which was to pay the amount claimed had been previously transferred and mingled with another fund, and was no longer subject to the provisions of that Act."

The foregoing decision was discussed at length by the Supreme Court of Illinois in its opinion.

In construing one of the Federal pension acts, this Court, in *Frisbie* v. *United States,* 157 U. S. 160 (39 L. Ed. 657), on page 166 said:

> "The pension granted by the government is a matter of bounty. 'No pensioner has a vested legal right to his pension. Pensions are the bounties of the government, which Congress has the right to give, withhold, distribute, or recall, at its discretion.' Walton *v.* Cotton, 60 U. S. 19 How. 355 (15: 658); United States *v.* Teller, 107 U. S. 64, 68 (27: 352, 354).
>
> "Congress being at liberty to give or withhold pensions, may prescribe who shall receive, and determine all the circumstances and conditions under which any application therefor shall be prosecuted. No man has a legal right to a pension, and no man has a legal right to interfere in the matter of obtaining pensions for himself and others. The whole control of that matter is within the domain of Congressional power. United States *v.* Hall, 98 U. S. 343 (25: 180)."

The case of *Lynch* v. *United States,* 292 U. S. 571 (78 L. Ed. 1434), cited by appellants as supporting their contention that this Court has held that there is a vested contract or property right in a benevolent purpose pension such as the one granted by the Miller Act, we submit holds just the contrary. On page 577, the Court said:

> "Pensions, compensation allowances and privileges are gratuities. They involve no agreement of parties; and the grant of them creates no vested right. The benefits conferred by gratuities may be redistributed or withdrawn at any time in the discretion of Congress. United States *v.* Teller, 107 U. S. 64, 68, 27 L. Ed. 352, 354, 2 S. Ct. 39; Frisbie *v.* United States, 157 U. S. 160, 166, 39 L. Ed. 657, 659, 15 S. Ct. 586; United States *v.* Cook, 257 U. S. 523, 527, 66 L. Ed. 350, 351, 42 S. Ct. 200."

In *Dismuke* v. *United States,* 297 U. S. 167 (80 L. Ed. 375), a case cited by appellants, involving a Federal act

that was contended to be a pension act, the Court held that it was not a pension act because of the fact that the annuitant made actual payments to a fund out of which the annuities were to be paid. The original suit was brought in the District Court of the United States pursuant to the Tucker Act, which Act declares that it shall not be construed as giving jurisdiction of claims for pensions. The Act which granted the annuities, which the Government contended were pensions, created a fund into which the annuitants made actual payments. For this reason it was held that the suit was not one based upon a claim for a pension, and in distinguishing between pensions and annuities, the Court, on page 170, said:

> "* * * The proviso withholding jurisdiction of suits on claims for pensions was a part of the original Tucker Act, which became law March 3, 1887, long before the enactment of the Retirement Act of May 22, 1920, and at a time when the term 'pensions' commonly referred to the gratuities paid by the government in recognition of past services in the Army or Navy. The annuities payable under the Retirement Act are not gratuities in that sense. The annuitant contributes to them by deductions from his salary or by actual payments into the fund, as in the present case, and the scheme of the Act is to provide for payment of annuities, in part at least from contributions by employees, in recognition both of their past services and of services to be performed."

The pensions provided for in the Miller Law are expressly made payable out of the general tax for educational purposes. No contributions are made and there was no fund created to which contribution or salary deduction could be paid.

(b) The Miller Law is a local public law purely governmental and in no sense relates to a private enterprise of the

State. That the maintenance, operation and control of public schools in Illinois are State governmental functions cannot be questioned.

The Constitution of Illinois provides:

> "The General Assembly shall provide a thorough and efficient system of free schools, whereby all children of this State may receive a good common school education."
>
> Sec. 1, Art. VIII, Constitution of Illinois—Smith-Hurd R. S. 1935, p. 67.

The appellee, Board of Education, is but an arm of the State—its servant, created to aid in the administration of a State governmental function. What it lawfully does of a public character is done under the sanction of the State, and it is only an auxiliary of the State for the purposes of local government. The Supreme Court of Illinois so held in *Kinnare* v. *City of Chicago*, 171 Ill. 332, a tort case, where, on pages 334-35, it said:

> "It therefore appears the appellee board is a corporation or quasi corporation created, nolens volens, by the general law of the State to aid in the administration of the State government, and charged, as such, with duties purely governmental in character. It owns no property, has no private corporate interests, and derives no special benefits from its corporate acts. It is simply an agency of the State, having existence for the sole purpose of performing certain duties, deemed necessary to the maintenance of an 'efficient system of free schools' within the particular locality in its jurisdiction. The State acts in its sovereign capacity, and does not submit its action to the judgment of courts and is not liable for the torts or negligence of its agents, and a corporation created by the State as a mere agency for the more efficient exercise of governmental functions is likewise exempted from the obligation to respond in damages, as master, for negligent

acts of its servants to the same extent as is the State itself, unless such liability is expressly provided by the statute creating such agency."

This holding has been continuously adhered to by the Supreme Court of Illinois. In *Lindstrom* v. *City of Chicago,* 331 Ill. 144, where the Court, on page 147, in referring to defendant Chicago Board of Education, said:

> "The reason for this rule lies in the fact that a school district of the character here considered is created merely to aid in the administration of the State government. It owns no property, has no private corporate interests and derives no special benefits from its corporate acts. It is simply an agency of the State having existence for the sole purpose of performing certain duties deemed necessary to the maintenance of 'an efficient system of free schools' within its jurisdiction. In creating such district the State acts in a sovereign capacity for the more efficient exercise of governmental functions resting in the State, and such district is exempted from the obligation to respond in damages, as master, for the negligent acts of its servants to the same extent as is the State itself, unless liability is expressly provided by the statute."

The General Assembly of Illinois, pursuant to the above quoted section of the Illinois Constitution, created many school districts throughout the State. In *Keime* v. *Community High School District,* 348 Ill. 228, there was before the Supreme Court of Illinois for consideration an act of the General Assembly permitting the joint use of school sites by two or more school districts. A taxpayer attacked the validity of this act and asserted that it violated the due process of law provision of the State Constitution. The significance of the Court's holding, on page 234, needs no comment:

> "School districts are quasi-municipal corporations, are subject to the plenary control of the legislature,

and the latter body may from time to time, in its discretion, abolish school districts, or enlarge or diminish their boundaries or increase, modify or abrogate their powers. (24 R. C. L. Par. 6, p. 563.) We are of opinion the act is not obnoxious to the provisions of the constitution, as urged by appellant."

Appellants' claim asserted before the Court below and presented by this appeal is—The General Assembly, by the adoption of the Miller Law, made a contract with each of the teachers and principals of the public schools of Chicago to pay them an annuity for life upon retiring. This claim is not based upon any actual contract, written or oral, entered into by the parties. No such contract exists. Appellants' claim is not that they have a vested interest in a fund created by the Miller Act from which the pensions are to be paid. No such fund was created and none exists.

The Miller Law upon which appellants base their contractual claim is a local law enacted for the purpose of aiding the State in performing a purely governmental function, a work of a public character—the operation of the schools. The judicial construction of the act is in no way Federal, is purely local, and the decision of the Supreme Court of Illinois thereon is therefore final and not subject to review. This jurisdictional point, we believe, was determined by this Honorable Court in *Atkin* v. *Kansas,* 191 U. S. 207 (48 L. Ed. 148), a case involving the Kansas statute limiting the hours of labor on public contracts to eight hours a day. It was insisted that the Fourteenth Amendment to the Federal Constitution guaranteed appellee the right to pursue any lawful contract and to enter into all contracts that are proper, necessary, or essential to the prosecution of his calling and that the State of Kansas unreasonably interfered with the exercise of that right, depriving him of equal protection of the laws. The act was broad and covered work performed on behalf of

the State, or on behalf of a municipal corporation, and the appellee contended that it was in conflict with the Fourteenth Amendment.

The Court held that "a municipal corporation is, so far as its purely municipal relations are concerned, simply an agency of the State for conducting the affairs of government, and as such, it is subject to the control of the State legislature."

The Court, on page 222, held:

> "If then, the work upon which the defendant employed Reese was of a public character, it necessarily follows that the statute in question, in its application to those undertaking work for or on behalf of a municipal corporation of the State, does not infringe the personal liberty of anyone. * * * It cannot be deemed a part of the liberty of any contractor that he be allowed to do public work in any mode he may choose to adopt, without regard to the wishes of the state. On the contrary, it belongs to the state, as the guardian and trustee for its people, and having control of its affairs, to prescribe the conditions upon which it will permit public work to be done on its behalf, or on behalf of its municipalities. No court has authority to review its action in that respect. Regulations on this subject suggest only considerations of public policy. And with such considerations the courts have no concern."

The courts are uniform in holding that school districts act only in a governmental or municipal capacity. (*Kinnare* v. *City of Chicago; Lindstrom* v. *City of Chicago, supra.*)

To the same effect as the *Atkin* case is *Heim* v. *McCall*, 239 U. S. 175, (60 L. Ed. 206) a case wherein the legislature of New York adopted an act providing that only citizens of the United States shall be employed in the construction of public works by the State or municipality, or by persons contracting with the State or such municipality. The con-

tention was that the act applied to contracts entered into before the passage of the act, as well as to contracts entered into thereafter.

The defendants in their briefs contended (page 213, L. Ed.) that:

> "A present legislative body cannot abdicate its authority, nor foreclose a succeeding legislature from action in the same matter, nor can the state permanently relinquish the trust vested in it to control and manage the public property."

It was charged that the act was unconstitutional in that it abridged the privileges and immunities of the contractors, depriving them of their right of contracting and depriving employers and employees of liberty and property without due process of law.

The court in its opinion cited with approval *Atkin* v. *Kansas, supra,* and held that the right to regulate the kind of labor that might be employed in the construction of public works is a local question and not open for review in the Federal Supreme Court on a writ of error to the State Court. In so holding, this Honorable Court, on page 191, said:

> "The contentions of plaintiffs in error under the Constitution of the United States and the arguments advanced to support them were at one time formidable in discussion and decision. We can now answer them by authority. They were considered in Atkin *v.* Kansas, 191 U. S. 207, 48 L. Ed. 148, 24 S. Ct. Rep. 124. It was there declared, and it was the principle of decision, that 'it belongs to the state, as the guardian and trustee for its people, and having control of its affairs, to prescribe the conditions upon which it will permit public work to be done on its behalf, or on behalf of its municipalities.' And it was said: 'No court has authority to review its action in that respect. Regula-

tions on this subject suggest only considerations of public policy. And with such considerations the courts have no concern.' "

Continuing, on page 192, the court said:

"The power of regulation was decided to exist whether a state undertook a public work itself or whether it 'invested one of its governmental agencies with power to care' for the work, which, it was said, 'whether done by the state directly or by one of its instrumentalities,' was 'of a public, not private, character.' And, being of public character, it (the law—the Kansas statute) did not 'infringe the liberty of anyone.' The declaration was emphasized. 'It cannot be deemed,' it was said, 'a part of the liberty of any contractor that he be allowed to do public work in any mode he may choose to adopt, without regard to the wishes of the state.' And obversely it was said (as we have already quoted): 'On the contrary, it belongs to the state, as the guardian of its people, and having control of its affairs, to prescribe the conditions upon which it will permit public work to be done on its behalf, or on behalf of its municipalities.' See also Ellis *v.* United States, 206 U. S. 246, 51 L. Ed. 1047, 27 Sup. Ct. Rep. 600, 11 Ann. Cas. 589. The contentions of plaintiffs in error, therefore, which are based on the 14th Amendment, cannot be sustained."

We respectfully submit that under the Constitution the State of Illinois must exclusively provide for the management and operation of the public schools of the State and that the Supreme Court of Illinois having held that the Miller Act created no vested property rights in future installments of teachers' pensions, the decision of that Court is final.

The support and maintenance of a public school system as prescribed by the Constitution of the State of Illinois is essentially and exclusively a public work and "it belongs to the State, as guardian and trustee for its people and hav-

ing control of its affairs to prescribe the conditions on which it will permit public work to be done on its behalf or on behalf of its municipalities."

For the reasons herein set forth, we respectfully submit that the Supreme Court of the United States should decline to take jurisdiction on this appeal.

RICHARD S. FOLSOM,
FRANK S. RIGHEIMER,
Attorneys for Board of Education of the City of Chicago.
BARNET HODES,
Corporation Counsel of the City of Chicago.

RALPH W. CONDEE,
FRANK R. SCHNEBERGER,
Of Counsel.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 713

CHESTER C. DODGE, CATHERINE L. BAIRD, AZILE B. REYNOLDS, ET AL.,

Appellants,

vs.

BOARD OF EDUCATION OF THE CITY OF CHICAGO ET AL.,

Appellees.

APPEAL FROM THE SUPREME COURT OF ILLINOIS; THERE HEARD ON APPEAL FROM THE SUPERIOR COURT OF COOK COUNTY, ILLINOIS.

Hon. Harry B. Miller, Trial Judge.

MOTION OF APPELLEES TO DISMISS OR AFFIRM.

MAY IT PLEASE THE COURT:

Now come Board of Education of the City of Chicago, James B. McCahey, Ernst Buehler, Irwin Walker, Paul

Drymalski, Charles W. Fry, Joseph P. Savage, William D. McJunkin, Harry W. Solomon, Joseph J. Salat, Mrs. W. S. Hefferan, Frank H. Landmesser and Harry H. Brackett, by Richard S. Folsom, Attorney for the Board of Education of the City of Chicago, their counsel; and City of Chicago, Edward J. Kelly, Gustave A. Brand and Robert Upham, by Barnet Hodes, Corporation Counsel, their counsel, and move the Court to dismiss with costs the appeal taken herein to this Court by Chester C. Dodge, Catherine L. Baird, Azile B. Reynolds, et al., appellants, upon the following grounds:

1. The question—whether the Act of the General Assembly of July 12, 1935 violates either Section 10, Article I, or the Fourteenth Amendment of the Constitution of the United States—was not considered by the trial court in its decision, was not considered by the Supreme Court of Illinois in its decision, nor was a decision thereon necessary to the determination of the cause. The point involved, as stated by the Illinois Courts, was—did the Act of the General Assembly of Illinois of May 19, 1926, as amended in 1927, grant to the appellants vested rights based upon contracts?

2. The decision of the Supreme Court of Illinois was based primarily on local law and questions of local law are not open to reexamination in this Court.

In the alternative, appellees move this Court to affirm the judgment of the Supreme Court of Illinois on the following grounds:

1. No substantial Federal question affording a basis for review by this Court is presented by the appeal.

2. The Federal question which appellants attempt to raise in this Court is foreclosed by prior decisions of this Court.

Respectfully submitted,

RICHARD S. FOLSOM,
FRANK S. RIGHEIMER,
Attorneys for Board of Education of the City of Chicago.
BARNET HODES,
Corporation Counsel.

RALPH W. CONDEE,
FRANK R. SCHNEBERGER,
Of Counsel.

(8729-C)

BLANK

PAGE

FILE COPY

FILED
APR 24 1937
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1936.

No. [redacted] 5

CHESTER C. DODGE, CATHERINE L. BAIRD, AZILE B. REYNOLDS, ET AL.,

Appellants,

vs.

BOARD OF EDUCATION OF THE CITY OF CHICAGO, ET AL.,

Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

BRIEF FOR APPELLEES.

RICHARD S. FOLSOM,
FRANK S. RIGHEIMER,
Attorneys for Board of Education of City of Chicago;

BARNET HODES,
Corporation Counsel of City of Chicago.

RALPH W. CONDER,
FRANK R. SCHNEBERGER,
Of Counsel.

CHAMPLIN-SHEALY COMPANY, CHICAGO 365

BLANK

PAGE

INDEX.

PAGE

Opinion below 1

Statutes involved 1

Question presented 2

Statement 2-9

Summary of argument 10-16

Argument 17-66

I. Miller Law pensions involve no agreement of parties and the grant of them creates no vested right. They may be reduced or changed at any time in the discretion of the Legislature 17-46

II. The Miller Law amounts to no more than a declaration of legislative policy on pensions and the acceptance of its benefits does not create a contract 46-60

III. The Miller Law is a local public law, purely governmental, and has to do with State governmental objects and not with any private enterprise thereof 60-63

IV. Where a statute is claimed to create a contractual right, this court will give weight to the construction of a statute by the courts of the state. Unless such construction is palpably erroneous, this court will accept the construction placed upon such statutes by the state courts 63-66

TABLE OF CASES CITED.

Adkins v. Children's Hospital, 261 U. S. 525, 67 L. ed. 785 ..... 15, 60
Armstrong v. City of Chicago, 247 Ill. App. 584 .... 4, 47, 49
Atkin v. Kansas, 191 U. S. 207, 48 L. ed. 48 ..... 15, 60
Bates v. Board of Education, 139 Cal. 145 48
Beutel v. Foreman, 288 Ill. 106 ..... 11, 24, 31, 35
Board of Education of the City of Chicago v. Upham, 357 Ill. 263 2
Bowler v. Nagel, 228 Mich. 434, 200 N. W. 258 .. 13, 44, 45
Casserly v. City of Oakland, 6 Cal. (2nd) 64 .. 12, 13, 41, 45
Cobbs v. Home Ins. Co., 18 Ala. App. 206, 91 So. 627 . 14, 45
Combes v. Getz, 285 U. S. 434, 76 L. ed. 866 ..... 16, 66
Commercial Bank v. Buckingham, 5 How. 317, 12 L. ed. 169 ..... 16, 63
DeWolf v. Bowley, 355 Ill. 530 ..... 11, 13, 31, 32
Dismuke v. United States, 297 U. S. 167, 80 L. ed. 375 ..... 10, 13, 21, 45
Dodge v. Board of Education, 364 Ill. 547 . 11, 19, 20, 23, 24, 63
Dryden v. Board of Pension Commissioners of the City of Los Angeles, et al., 59 Pac. (2nd) 104 40
Eddy v. Morgan, 216 Ill. 437 ..... 11, 24
Fellows, Attorney General v. Connolly, 193 Mich. 499, 160 N. W. 581 ..... 13, 42, 45
Freeport W. Co. v. Freeport, 180 U. S. 587, 45 L. ed. 679 ..... 10, 16, 66
Frisbie v. United States, 157 U. S. 160, 39 L. ed. 657 .. 10, 20
Gibbs v. Relief Ass'n, 125 Minn. 174, 145 N. W. 1075 .. 12
Greene v. Lessee of Neal, 6 Pet. 291, 8 L. ed. 402 ..... 15, 61
Head v. Jacobs, 150 Ky. 290, 150 S. W. 349 ..... 12, 38
Hein v. McCall, 239 U. S. 175, 60 L. ed. 206 ..... 15, 60
Holton v. Tampa, 119 Fla. 556, 159 S. W. 292 12
Hughes v. Traeger, 264 Ill. 612 ..... 11, 14, 31
Jackson ex dem. Hart v. Lamphire, 3 Pet. 280, 7 L. ed. 679 ..... 16, 63
Jones et al. Trustees v. Prairie O. & G. Co., 6 Pet. 291 .. 62
Kavanagh v. Board of Police Pension Fund Commissioners, 134 Cal. 50, 66 Pa. 36 ..... 14, 43, 45
Keine v. Community H. S. Dist., 348 Ill. 228 48

Lage v. City of Marshalltown, 212 Iowa 53, 235 N. W. 761 ..... 14, 45
Lynch v. United States, 292 U. S. 571, 78 L. ed. 1434.. 10, 20
Matter of Mahon v. Board of Education, 68 N. Y. App. Div. 154 ..... 13, 44, 45
McCann v. Retirement Board, 331 Ill. 193..... 11, 24, 29
Mead, et al v. Acton, et al., 139 Mass. 341..... 13, 44, 45
Mell v. State, 130 Ohio St. 306..... 12, 36
Milwaukee El. Ry. Co. v. R. R. Com., 238 U. S. 174, 59 L. ed. 1254 ..... 16, 66
Morehead v. N. Y. ex rel. Tixaldo, 80 L. ed. 921.. 15, 61
New Jersey v. Yard, 95 U. S. 104, 24 L. ed. 352..... 53
Passaic National Bank & Trust Co. v. Eelman, 116 N. J. Law 279, 183 A. 677..... 12, 39
Pecoy v. Chicago, 265 Ill. 78..... 11, 24
Pennie v. Reis, 132 U. S. 464, 33 L. ed. 426..... 19
People v. Abbott, 274 Ill. 380..... 11, 31
People v. Hanson, 330 Ill. 79..... 11, 24, 27
People v. Retirement Board, 326 Ill. 579..... 11, 24, 30
Phelps v. Board of Education, 81 L. ed. 388..... ..... 14, 16, 21, 22, 50, 64, 66
Porter v. Loehr, 332 Ill. 353..... 11, 31
Raines v. Board of Trustees Pension Fund, 365 Ill. 610 ..... 11, 32, 33
Renz v. Hibbing Firemen's Relief Ass'n, 186 Minn. 370, 243 N. W. 713 ..... 13, 14, 43, 45
Retirement Board v. McGovern, 316 Pa. 161, 134 Atl. 400 ..... 13, 42, 45
Roddy v. Valentine, 268 N. Y. 228, 197 N. E. 260.. 13, 44, 45
Rudolph v. United States ex rel. Stuart, 36 App. Cases D. C. 379 ..... 12, 38
Ryan v. Foreman, 262 Ill. 175..... 11, 24
Salt Mfg. Co. v. East Saginaw, 80 U. S. 373, 20 L. ed. 611 ..... 14, 54
Seton Hall College v. South Orange, 242 U. S. 100, 61 L. ed. 170 ..... 16, 66
Stanislaus County v. San Joaquin & K.'s R. C. & I. Co., 192 U. S. 201, 48 L. ed. 406..... 15, 58
State v. Love, 89 Neb. 149, 131 N. W. 196..... 13, 45
State ex rel. Gorczyca v. City of Minneapolis, 174 Minn. 594, 219 N. W. 924..... 13, 45

State ex rel. Stafford v. State Capitol A. & I. Board, 219 Wis. 31 ..... 13, 42
State ex rel. v. Zupnik, 131 Ohio St. 94 ..... 12, 38
Stiles v. Board of Trustees, 281 Ill. 636 ..... 11, 24
Tampa W. Works v. City of Tampa, 199 U. S. 241, 50 L. ed. 170 66
Trammell v. City of Dallas, not yet reported 12
Trotzier v. McElroy, 182 Ga. 719, 186 S. E. 817 ... 13, 44, 45
Turner v. Board of Commissioners, 173 U. S. 461, 43 L. ed. 768 ..... 16, 63
United States v. Hall, 98 U. S. 343, 25 L. ed. 180 10
United States v. Hartwell, 6 Wall 385 ..... 14, 50
United States v. Teller, 107 U. S. 64, 27 L. ed. 352 ... 10, 19
Walton v. Cotton, 60 U. S. 555, 15 L. ed. 658 ..... 10, 18
Wisconsin & Michigan Railway Co. v. Powers, 191 U. S. 378, 48 L. ed. 229 ..... 15, 56

Table of Statutes Cited.

Miller Law as in force prior to July, 1935.

Smith-Hurd Ill. R. S. 1933, Chap. 122, Pars. 614a, 614b, 614c, p. 2725 ..... 3, 5, 6, 10, 17
Cahill's Ill. R. S. 1933, Chap. 122, Pars. 269 (1) 269(2) 269 (3), p. 2543.
Appendix, p. 68.

Miller Act of 1935, effective July 12, 1935.

Smith-Hurd Ill. R. S. 1935, Chap. 122, Pars. 614a, 614b, 614c, p. 3038 ..... 5, 6, 9, 10, 17
Ill. State Bar Stats. 1935, Chap. 122, Pars. 269 (1), 269 (2), 269 (3).
Appendix, p. 72.

Sections of the school law providing for the creation and maintenance of the public school teachers' pension and retirement fund in force prior to 1935.

Smith-Hurd Ill. R. S. 1933, Chap. 122, Pars. 175-190, pp. 2646-2650 ..... 2, 3
Cahill's Ill. R. S. 1933, Chap. 122, Pars. 176-191, pp. 2528-2533.

Sections of the school law providing for the creation and maintenance of the public school teachers' pension and retirement fund in force July 12, 1935.

Smith-Hurd Ill. R. S. 1935, Chap. 122, Pars. 175-190, pp. 2949-2954 3
Ill. State Bar Stats. 1935, Chap. 122, Pars. 176-191, pp. 2878-2883.

Sections of the school law authorizing a tax levy for public school teachers' pension and retirement fund as in force prior to July, 1935.

Smith-Hurd Ill. R. S. 1933, Chap. 122, Par. 212d, p. 2657.
Cahill's Ill. R. S. 1933, Chap. 122, Par. 313 (4), p. 2553.

Sections of the school law authorizing a tax levy for public school teachers' pension and retirement fund as in force July 12, 1935.

Smith-Hurd Ill. R. S. 1935, Chap. 122, Par. 212d, page 2965 3
Ill. State Bar Stats. 1935, Chap. 122, Par. 313 (4), p. 2907.

Tax levy for educational purposes.

Smith-Hurd Ill. R. S. 1935, Chap. 122, Par. 212a, Sec. 189 1/8, p. 2963 6
Ill. State Bar Stats. 1935, Chap. 122, Par. 313 (1), Sec. 189 1/8, p. 2905.

APPENDIX.

Miller Law in force prior to July, 1935 68-71
Miller Law of 1935 ..... 71, 72

BLANK

PAGE

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1936.

No. 713

CHESTER C. DODGE, CATHERINE L. BAIRD, AZILE B. REYNOLDS, ET AL.,

Appellants,

vs.

BOARD OF EDUCATION OF THE CITY OF CHICAGO, ET AL.,

Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

BRIEF FOR APPELLEES.

Opinion Below.

The opinion of the Illinois Supreme Court is officially reported in *Dodge* v. *Board of Education,* 364 Ill. 547 (R. 265).

Statutes Involved.

The statutes involved are set forth in the appendix, *infra,* pages 68-72.

Miller Law as in force prior to the Act of July, 1935, Appendix, p. 68.

Miller Law of 1935, Appendix, p. 72.

Question Presented.

The sole question in this case, other than that of jurisdiction, heretofore raised, is, did the act of the legislature of the State of Illinois, commonly called the Miller Law of 1926 as amended in 1927 grant to Chicago teachers vested property rights in future installments of the pensions created by that law, which could not be reduced by a subsequent act of the legislature without impairing the obligation of a contract.

STATEMENT.

A consideration of the history of the pension laws of Illinois pertaining to Chicago school teachers we believe will assist in understanding the questions involved.

Chicago's retired school teachers continuously since 1926 have been the recipients of two pensions, each separate and distinct from the other—one, under the regular Teachers' Pension and Retirement Fund Act—the other under the so-called Miller Law. No other school system or public body so far as we have been able to discover has either such a system of double pensions or makes provision for retired teachers as the Chicago Board of Education is required to do under the law (Miller Law) now before this court.

The General Assembly of Illinois first made provision for pensions in 1895 for public school teachers of the Chicago public school system, who voluntarily retired. The fund was originally maintained solely by contributions from teachers. That law has been amended many times. It is

now a part of the school act and appears in Par. 175 (Sec. 152) to Par. 190 (Sec. 165) of Chap. 122, Smith-Hurd Ill. R. S. 1935. It is commonly known as the Public School Teachers' Pension and Retirement Fund Act, deriving its name from the fact that the fund created by the statute is called in the statute "the public school teachers' pension and retirement fund." The fund is now supported by a tax levied for that purpose under the authority of Par. 212d (Sec. 189½), Chap. 122, Smith-Hurd Ill. R. S. 1935, and from deductions from teachers' salaries made pursuant to Sec. 155 (Par. 178, Chap. 122, *id.*) of the school law. The teachers' pension fund is administered by a board of trustees and all pensions payable under the act are payable solely out of this fund.

The statute pertaining to this pension was amended in 1935 to increase the tax rate authorized to be levied pursuant to Par. 212d, Chap. 122, *id.*, and at the same time increased the amount of the pensions to be received under it by the teachers upon retirement to amounts ranging from $800.00 to $1,200.00 per annum, depending upon length of service. The retired teachers are continuing to receive their pensions under this act, the validity of which is not challenged by appellants.

The General Assembly of Illinois in 1925 passed a second pension law for teachers, commonly known as the Miller Law. This act was not presented to the Governor of Illinois for approval until May 19, 1926 and therefore did not become a law until that date. It is set forth on page 49 of the transcript of record filed herein. This act provided for compulsory retirement of teachers aged 75 or over in 1926, aged 74 in 1927, aged 73 in 1928, aged 72 in 1929, and aged 70 or over in 1930, and provided for annual payments of $1,500.00 to each teacher so retired. This

payment was in addition to the amount received by such retired teachers from the regular Teachers' Pension Fund above referred to, as the Miller Law expressly provided that nothing in the act contained should in any way impair or prejudice any right of a teacher to the pension under the Teachers' Pension and Retirement Fund Act, previously described (R. 50).

The Miller Law contained a provision that any teacher or principal retired pursuant to the act should be subject to the call of the superintendent of schools for consultation or advisory service (R. 50).

During the period that elapsed between the passage of this act and its final approval by the Governor, the appellee board by a rule attempted to provide for the retirement of teachers and the payment of pensions in practically the same manner as provided by the statute. The rule was not intended, nor was it so worded as to be in conflict with the Teachers' Pension and Retirement Fund, but provided for a pension of $1,500.00 per annum, in addition to the regular teachers' pension. This rule, like the statute, contained a provision that the teachers retired pursuant to it should be subject to the call of the superintendent of schools for consultation or advisory service. The validity of the rule was challenged by the teachers in the case of *Armstrong* v. *City of Chicago,* 247 Ill. App. 584. The Board of Education, the defendant herein and appellee therein, in attempting to justify the rule, offered evidence of consultation and advisory service as provided by the rule. In passing on this point, the Appellate Court on page 597 said:

> "The evidence introduced on the hearing discloses that the services or duties, which the complainants (under the emeritus rules and after their transfer to such service) were expected to perform and actually were

called upon to perform, were unsubstantial; and also tends to show that the real intent of the Board, in passing and acting upon said rules, was to retire complainants, and other principals and teachers who had reached 70 years of age, virtually upon a pension, and that the consultation and advisory service, as mentioned in the rules, was in the nature of a pretense or disguise, giving color to the claim that complainants still were in the education service, whereas in fact they really had been retired or removed therefrom."

The Appellate Court reversed the lower court and specifically ordered that they be reinstated, but when so reinstated their tenure in their positions be subject to the provisions of the Miller Law, saying (p. 599):

> "* * * but that their tenure in said positions be subject to the provisions of said 'Miller Act,' as originally in force on May 19, 1926, and as amended on June 24, 1927."

In 1927 the Miller Law was amended by adding Section 3, which provided for pensions on a sliding scale ranging from $1,000.00 to $1,500.00 per year to teachers voluntarily retiring between the ages of 65 and 70 (R. 62-63).

This section was repealed by the Act of 1935.

The Miller Law as originally adopted or as subsequently amended neither established nor made provision for the establishment of a fund out of which such pensions are payable. There is no provision for teachers' contributions. The law does not authorize or provide for deductions from teachers' salaries of any money to be used towards the payment of such pensions and teachers contribute nothing towards these pensions. These pensions are, by the act, expressly made payable solely from moneys derived from the general tax levy for educational purposes—the tax provided by law for the payment of salaries of teachers and

others actively engaged in operating the schools of Chicago. The educational taxes are levied annually pursuant to Section 189½ of the School Law, par. 212-A, Smith-Hurd Ill. R. S. 1935.

These pension provisions of the Miller Law are all found in Sections 2 and 3 of the act. Section 1 of the act pertains solely to retirement. The Miller Law having become effective May 19, 1926 (R. 49), the Superintendent of Schools, pursuant to its provisions, on July 28, 1926, reported the names of a total of twenty persons who on August 1, 1926, would be required to be retired pursuant to the act and be paid the sum of $1,500.00 annually (R. 12-13). This required an expenditure of $12,000.00 during the year 1926 by the Board of Education out of educational taxes.

On January 12, 1927, fourteen additional persons were retired (R. 74). These retirements increased annually and the amounts required to be paid to teachers retired pursuant to this Miller Law had increased to such an extent that the Board was required to and did appropriate for this expense in its annual school budget for the year 1935 the sum of $1,125,000.00 (R. 115, 132).

In the meantime these retired teachers were also receiving their regular pensions from the Public School Teachers' Pension and Retirement Fund pursuant to the other pension statute.

The financial depression that we have been passing through seriously affected the Chicago Board of Education. It owed millions of dollars to teachers for past due salaries and was without funds. With the exception of a few thousand dollars from miscellaneous revenues, the schools are maintained entirely from taxes.

This state of the Board's finances was found to exist by the Supreme Court in *Board of Education* v. *Upham*, 357 Ill. 263, a case involving a bond issue of the Board of Education, the proceeds of which were to be used for the payment of unpaid and past due teachers' salaries. The bonds were secured by a mortgage on the Board's real estate pursuant to a statute whose validity was challenged. The court in its opinion made the following finding of facts as to the financial condition of the appellee Board in 1934, on page 265:

> "The following facts are necessary to an understanding of the questions involved: The revenues of the board of education have been greatly diminished since 1928 on account of the non-payment and delay in the collection of taxes as well as the lowering of assessments of property values. As a result, the board has been unable to pay in full the salaries of its school teachers and other necessary expenses. Unpaid salaries of teachers and other employees amount to $25,600,000. For the current year 1934 the board has obligations for teachers' salaries and education expenses in the sum of $25,000,000. There are past-due claims amounting to $3,800,000, making a total of $54,400,000. There is no money in the treasury with which to meet these obligations. In 1930 the General Assembly, recognizing the credit impairment of certain municipalities and the necessity for raising cash to pay current liabilities, enacted a law which provided for the creation of a revolving fund out of the proceeds of the sale of bonds in the sum of $25,000,000. The board of education of Chicago availed itself of that law. In the long duration of the depression the fund so created became exhausted, and in 1933 the legislature added section 134¾ to the School act. (Cahill's Stat. 1933, chap. 122, par. 158 (2) This added section provides that in all cases where the board of education in cities having a population exceeding 500,000 inhabitants shall have heretofore created a working cash fund pursuant to section 134½ of the act, it may incur an indebtedness

for the purpose of increasing such fund and issue bonds therefor in an amount not to exceed $40,000,000. Under conditions and limitations specifically set forth, the proceeds from the sale of the bonds are to be placed in that fund and are not subject to appropriation or budget expense. The board may, however, by resolution direct the transfer of money from that fund to the educational purposes fund. Provision is made for the restoration of the working cash fund from taxes and other revenues, when collected."

The proceeds of the bond issue paid part of the past due obligations of the Board but the financing of current obligations such as teachers' payrolls and other educational expenses including Miller Law pensions presented a problem to the Board of balancing a budget on reduced revenue and required drastic economies. As the teachers' payrolls constituted the major expenses, teachers' salaries were reduced.

The facts as disclosed by the answer of the appellees and the replication filed thereto show that the maximum annual salary of an elementary teacher prior to the adoption of the amendment complained of was reduced as a result of the Board's economy measures to $1,912.50, and that the salary of an elementary teacher in the lower group was reduced to $1,127.50 (R. 115; R. 152-153). Neither the pension paid from the regular Teachers' Pension and Retirement Fund nor the additional pension paid by the Board under the Miller Law out of taxes levied for maintaining the schools were reduced, with the result that the majority of the retired teachers received from both pensions a sum aggregating $2,500.00 per annum, or $587.50 more than the maximum salary received by elementary school teachers and $1,372.50 more than the salary received by teachers in the lower group for conducting classrooms daily (R. 115).

The legislature in adopting the Miller Law of 1935 eliminated the $1,500 per year payment to retired teachers and provided in lieu thereof for the payment of $500 per annum to retired teachers, thus effecting a great annual saving in the board's expenditures and at the same time correcting the then existing unjust condition of payments to each retired teacher in excess of the maximum salary of the active elementary teacher. The effect of the amendment was that the total to be paid from the two pensions to the retired teachers in future installments annually in the great majority of cases was $1,500 per annum. In some few cases it would amount to $1,300 and in others to $1,700 per annum, depending on the date of retirement and length of service.

All pension installments due under the old Miller Law were paid before the Board of Education put the provisions of the Miller Law of 1935 into effect. Appellants herein brought their suit in the Superior Court of Cook County, Illinois, for injunction. The decision of the Superior Court denying the injunction and dismissing the bill was affirmed by the Supreme Court of Illinois.

Appellees' Motion to Dismiss or Affirm.

The appellees, Board of Education of the City of Chicago, *et al.*, have filed a statement in this cause opposing jurisdiction and moving to dismiss, and in the alternative to affirm. An order was entered herein providing that further consideration of the motion to dismiss or affirm be postponed to the hearing of the case on the merits.

SUMMARY OF ARGUMENT.

I.

Miller Law pensions involve no agreement of parties and the grant of them creates no vested right. They may be reduced or changed at any time in the discretion of the legislature.

A. This court has always held without exception that such pensions, payable solely out of public funds are gratuities; that they involve no agreement of parties; that the grant of them creates no vested right and that such benefits may be redistributed or withdrawn at any time in the discretion of Congress.

Walton v. *Cotton,* 60 U. S. 555, 15 L. ed. 658.
U. S. v. *Hall,* 98 U. S. 343, 25 L. ed. 180.
U. S. v. *Teller,* 107 U. S. 64, 27 L. ed. 352.
Frisbie v. *U. S.,* 157 U. S. 160, 39 L. ed. 657.
Lynch v. *U. S.,* 292 U. S. 571, 78 L. ed. 1434.

Such a pension is not analogous to one where the annuitant contributed by deductions from his salary or by actual payment into a retirement fund.

Dismuke v. *United States,* 297 U. S. 167.

B. Miller Law pensions are payable solely out of general taxes levied annually for educational purposes. Teachers contribute nothing either by deductions from salaries or by actual payments into a retirement fund.

Smith-Hurd R. S. 1933, Chap. 122, Par. 614(a), 614(b), 614(c).
Smith-Hurd R. S. 1935, Chap. 122, Par. 614(a), 614(b), 614(c).

The Supreme Court of Illinois has without exception held that (1) pensions are not based on contracts, (2) future installments of pensions are not vested property rights, (3) pensions are mere expectancies based on an anticipated continuance of existing law, and (4) the State may reduce future installments of pensions without violating the provisions of the State or Federal constitution.

Eddy v. *Morgan*, 216 Ill. 437.
Ryan v. *Foreman*, 262 Ill. 175.
Hughes v. *Traeger*, 264 Ill. 612.
Pecoy v. *Chicago*, 265 Ill. 78.
Stiles v. *Board of Trustees*, 281 Ill. 636.
Beutel v. *Foreman*, 288 Ill. 106.
People v. *Retirement Board*, 326 Ill. 579.
People v. *Hanson*, 330 Ill. 79.
McCann v. *Retirement Board*, 331 Ill. 193.
Dodge v. *Board of Education*, 364 Ill. 547.
Raines v. *Board of Trustee's Pen. Fund*, 365 Ill. 610.

The following decisions cited by appellants as supporting the proposition that pensions are vested rights do not so hold.

Hughes v. *Traeger*, 264 Ill. 612.
People v. *Abbott*, 274 Ill. 380.

This was pointed out by Justice Carter in *Beutel* v. *Foreman*, 288 Ill. 106, who also wrote the opinion in *People* v. *Abbott*, 274 Ill. 380.

The following Illinois decisions cited by appellants as supporting their contention of vested rights in a pension are not applicable: *DeWolf* v. *Bowley*, 355 Ill. 530 as it involves no question of vested rights or power of the legislature to alter pension acts; *Porter* v. *Loehr*, 332 Ill. 353,

which merely holds that a pension cannot be increased after retirement because it is extra compensation and therefore violates Section 19, Article 4 of the State Constitution.

C. Courts of other jurisdictions are in accord with the rule laid down by the Supreme Court of Illinois in conformity with the decisions of the United States Supreme Court that there are no vested rights in future installments of pensions payable solely from public funds and to which no contributions are made. The states differ only in what constitutes contribution.

(1) The following states hold that a pension granted by public authorities is not a contractual obligation but a gratuitous allowance in the continuance of which the pensioner has no vested right and which may be changed, modified or reduced in the discretion of the legislature:

Mell v. *State,* 130 O. St. 306.
State ex rel. Zupnik, 131 O. St. 94.
Rudolph v. *U. S.,* 36 App. Cases D. C. 379.
Head v. *Jacobs,* 150 Ky. 290, 150 S. W. 349.
Passaic National Bank & Trust Co. v. *Eelman,* 116 N. J. Law 279, 183 A. 677.

(2) The following states hold that a pension may be reduced after retirement even though contributions are made to a retirement fund:

Holton v. *Tampa,* 119 Fla. 556, 159 S. W. 292.
Trammell v. *City of Dallas* (Tex.), Unreported.
Gibbs v. *Relief Ass'n,* 125 Minn. 174, 145 N. W. 1075.
Casserly v. *City of Oakland,* 6 Cal. (2d) 64.

D. Decisions of the several states relied on by appellants involve situations that are not comparable to that of

the appellants and have no application to pensions such as are provided for under the Miller Law, for the following reasons:

(1) The statute under which pensioners claimed a right provided for contributions to a retirement fund created for that purpose.

Roddy v. *Valentine,* 268 N. Y. 228, 197 N. E. 260.
Dismuke v. *U. S.,* 297 U. S. 167, 80 L. ed. 375.
Trotzier v. *McElroy,* 182 Ga. 719, 186 S. E. 817.
Retirement Board v. *McGovern,* 316 Pa. 161, 174 Atl. 400.
Renz v. *Hibbing Firemen's Relief Ass'n,* 186 Minn. 370, 243 N. W. 713.
Casserly v. *City of Oakland,* 6 Cal. (2d) 64.
Fellows Atty General v. *Connelly,* 193 Mich. 499, 160 N. W. 581.

(2) The court merely decided that the legislature by statute had the authority to provide for a pension scheme for persons in service and no question of any subsequent act of the legislature was involved.

Bowler v. *Nagel,* 228 Mich. 434, 200 N. W. 258.
Matter of Mahon v. *Board of Education,* 68 N. Y. App. Div. 154.
DeWolf v. *Bowley,* 355 Ill. 530.
Fellows, Attorney General v. *Connolly,* 193 Mich. 499, 160 N. W. 581.
Mead v. *Acton,* 139 Mass. 341.
State ex rel. Gorczyca v. *City of Minn.,* 174 Minn. 594.
State ex rel. Stafford v. *State Annuity Board,* 219 Wis. 31.
State v. *Love,* 89 Neb. 149, 131 N. W. 196.

Cobbs v. *Home Ins. Co.*, 18 Ala. App. 206, 91 So. 627.

(3) The particular lump sum payment of pension had accrued and was past due.

Kavanagh v. *Police Commissioners*, 134 Cal. 50, 66 Pac. 36.

(4) The act under which the pensioner claimed a right to a pension was still in force and had not been changed by subsequent acts of the legislature.

Lage v. *City of Marshalltown*, 212 Ia. 53, 235 N. W. 761.

Renz v. *Hibbing Firemen's Relief Ass'n*, 186 Minn. 370, 243 N. W. 713.

II.

The Miller Law amounts to no more than a declaration of legislative policy on pensions and the acceptance of its benefits does not create a contract.

A. The status of tenure teachers is dependent on a statute like that of the incumbent of a statutory office which the legislature at will may change, modify or abolish.

U. S. v. *Hartwell*, 6 Wall. 385.

Hughes v. *Traeger*, 264 Ill. 612.

Phelps v. *Board of Education of the Town of West New York*, Supreme Court Nos. 454, 455, Opinion of March 1, 1937, 81 L. ed. 388.

B. The Miller Law is not an offer that could or did ripen into a contract upon the appellant's retirement.

Salt Mfg. Co. v. *East Saginaw*, 80 U. S. 373, 20 L. ed. 611.

Wisconsin & Michigan Ry. Co. v. *Powers,* 191 U. S. 378; 48 L. ed. 229.

Stanislaus County v. *San Joaquin and K's. R. C. & I.,* 192 U. S. 201; 48 L. ed. 406.

III.

The Miller Law is a local public law, purely governmental, and has to do with State governmental objects and not with any private enterprise thereof

A. The judicial construction of the Miller Act is purely local and not federal, and therefore the decision of the Supreme Court of Illinois thereon is final and not subject to review.

Atkin v. *Kansas,* 191 U. S. 207 (48 L. ed. 148).

Hein v. *McCall,* 239 U. S. 175 (60 L. ed. 206).

Adkins v. *Children's Hospital,* 261 U. S. 525.

B. Not only will this court follow the opinion of a State court in its construction of a state statute, but should the views of the State court be modified or changed, the new holdings will be followed by this court.

Greene v. *Lessee of Neal,* 6 Pet. 291, 8 L. ed. 402.

C. This court is without power to put a different construction upon a state statute from that adopted by the highest court of the state.

Morehead v. *New York ex rel. Tipaldo,* 80 L. ed. 921.

D. It is within the province and privilege of state courts to construe their own statutes, and it is no function of the United States Supreme Court to review such decisions.

Turner v. *Board of Commissioners,* 173 U. S. 461, 43 L. ed. 768.

Jackson ex dem. Hart v. *Lamphire,* 3 Peters 280, 7 L. ed. 679.

Commercial Bank of Cincinnati v. *Buckingham, Executor,* 5 How. 317, 12 L. ed. 169.

IV.

Where a statute is claimed to create a contractual right, this court will give weight to the construction of the statute by the courts of the State. Unless such construction is palpably erroneous, this court will accept the construction placed upon such statute by the State Courts.

Phelps v. *Board of Education of the Town of West New York,* Nos. 454, 455, Supreme Court Opinion of March 1, 1937; 81 L. ed. 388.

Freeport Water Co. v. *Freeport,* 180 U. S. 587.

Tampa Water Works v. *Tampa,* 199 U. S. 241.

Milwaukee Elec. Ry. Co. v. *R. R. Com.,* 238 U. S. 174.

Seton Hall College v. *South Orange,* 242 U. S. 100.

Coombes v. *Getz,* 285 U. S. 434.

ARGUMENT.

I.

Miller Law pensions involve no agreement of parties and the grant of them creates no vested right. They may be reduced or changed at any time in the discretion of the legislature.

We pointed out in our Statement Opposing the Jurisdiction and Motion to Dismiss or Affirm, heretofore filed herein, that the Federal question attempted to be asserted by appellants is foreclosed by previous decisions of this court, which has uniformly held that statutes providing for pensions or providing for tenure in office do not create contracts.

Section 1 of the Miller Act, effective 1926, provided for the compulsory retirement of teachers from active service according to a schedule. It related solely to retirement and pensions are not mentioned. Its validity is not challenged.

Section 2 provides that upon such retirement each of said retired teachers should receive $1500 annually from money to be derived annually from the general tax levies for educational purposes. Section 2 further provided that nothing in the Act contained should "in any way impair or prejudice any rights of a teacher, * * * so retired to annuity under other statutory provisions concerning any teachers' pension fund or teachers' pension and retirement fund, established in accordance with the provisions of any statute of this State; and shall not repeal or modify any other such statutory provisions."

When the Act was amended in 1927, Sections 1 and 2 remained as before; but a new section, Section 3, was added

providing for a pension to be paid to those, who voluntarily retired at ages between 65 and 70 years, and repeated therein the provision already found in Section 2 (reserving rights under the Teachers' Pension and Retirement Fund) providing that the payment "to be made under this section of the Act which it amends shall be in addition to any such annuity." This amendment also broadened the title of the Act. This Act was again amended in 1929, making minor changes in Section 3 not involved in this suit. Neither the compulsory retirement feature of the Act nor any other of its provisions were challenged and the Board in accordance with the terms of this Act of 1926, as amended in 1927 and 1929, continued to make the payments required solely out of moneys collected from taxes levied annually for educational purposes.

The Act makes no provision for the establishment of a fund out of which such payments can be made. It does not require any contributions from teachers and none have been made, either voluntarily or by way of salary deductions.

Since the Act does not provide for contributions, these Miller Law pensions are identical with the old pensions which this court has consistently held could be given, withheld, distributed or recalled at the discretion of the legislative bodies which created them.

United States Supreme Court Decisions.

In the case of *Walton* v. *Cotton,* 60 U. S. 555, 15 L. ed. 658, the court held that a pension of the character just described was "undoubtedly a bounty." In *United States* v. *Hall,* 98 U. S. 343, 25 L. ed. 180, the court reached the same conclusion.

Whether or not Congress could pass a law cutting off a pension that a person was receiving pursuant to a prior act was before this court in *United States* v. *Teller*, 107 U. S. 64; 27 L. ed. 352. The court held that the pensioner had no vested right to the pension under the earlier Act, which could not be cut off by subsequent legislation and in so holding said:

> "It was competent for Congress to pass this Act. No pensioner has a vested legal right to his pension. Pensions are the bounties of the Government, which Congress has the right to give, withhold, distribute or recall, at its discretion."

This principle of law strictly adhered to by this Honorable Court is also the law in Illinois and has never been departed from by the Illinois courts.

Appellants cite the case of *Pennie* v. *Reis*, 132 U. S. 464, 33 L. ed. 426, contending that the language in that case states their position in the case at bar. We respectfully submit that instead of supporting appellants' contention that there is a vested and contractual right in future installments of pensions, the case holds squarely to the contrary.

On page 471, the court said:

> "The direction of the State, that the fund should be one for the benefit of the police officer or his representative under certain conditions, was subject to change or revocation at any time, at the will of the Legislature. There was no contract on the part of the State that its disposition should always continue as originally provided."

In considering this decision, Mr. Justice Stone, speaking for the Supreme Court of Illinois in the case at bar, *Dodge* v. *Board of Education of the City of Chicago*, 364 Ill. 547,

distinguishes lump sum pensions due upon death from installment pensions, as follows (page 555):

> "The difference in nature between a lump sum pension or award and a continued pension is obvious and is sufficient to mark the difference in the rule with reference to interest therein as found in the decisions of the courts. Under a statute such as the one in *Pennie* v. *Reis, supra,* where, on the happening of a certain event a certain sum of money became due, the interest of the beneficiary when such event takes place is analogous to the interest of a pensioner whose installment or pension has become due under the terms of a pension act. *Pennie* v. *Reis, supra,* does not in any way militate against the rule generally adopted, that pension acts do not create in their beneficiaries a vested interest in future installments of the pensions created thereby."

Another case wherein this court was called upon to determine whether a pension created a vested contractual right was *Frisbie* v. *United States,* 157 U. S. 160, 39 L. ed. 657. The court, on page 166, states:

> "The pension granted by the Government is a matter of bounty. 'No pensioner has a vested legal right to his pension. Pensions are the bounties of the Government, which Congress has the right to give, withhold, distribute, or recall, at its discretion.' *Walton* v. *Cotton,* 60 U. S. 555, 19 How. 355 (15:658); *U. S.* v. *Teller,* 207 U. S. 64, 68 (27:352, 354)."

In 1934, this court decided the case of *Lynch* v. *United States,* 292 U. S. 571, 78 L. ed. 1434, wherein it pointed out the distinction between benevolent purposes pensions, such as the one granted by the Miller Law, and annuities payable under a statute providing for war risk insurance under the terms of which the insured paid premiums provided for in a written contract or policy. Although this case was cited by appellants in their jurisdictional

statement, we find that they failed to cite it in their brief in support of their claim of contractual vested rights. The reason is obvious.

On page 577, the court said:

> "* * * Pensions, compensation, allowances and privileges are gratuities. They involve no agreement of parties; and the grant of them creates no vested right. The benefits conferred by gratuities may be redistributed or withdrawn at any time in the discretion of Congress. *U. S.* v. *Teller,* 107 U. S. 64, 68 (27 L. ed. 352, 354) 2 S. Ct. 39; *Frisbie* v. *U. S.,* 157 U. S. 160, 166 (39 L. ed. 657, 659) 15 S. Ct. 586; *U. S.* v. *Cook,* 257 U. S. 523, 527, (66 L. ed. 350, 351) 42 S. Ct. 200."

Dismuke v. *United States,* 297 U. S. 167, (80 L. ed. 375) cited by appellants, involved a federal retirement act and the court held that the proviso in the Tucker Act withholding jurisdiction of suits on claims for pensions did not deprive the District Court of jurisdiction of claims under that retirement act as "the annuitant contributes to them by deductions from his salary or by actual payments into the fund" (p. 170). As we pointed out heretofore, the Miller pension grants come solely out of taxes annually levied for educational purposes and the teachers make no contribution whatever either by deductions from salaries or by actual payments into a fund.

Claims similar to those of appellants here of the establishment of vested contract rights by legislative action were asserted in the cases of *Phelps* v. *Board of Education of the Town of West New York,* case No. 454, and *Lucy Askam, et al.* v. *Board of Education of the Town of West New York,* case No. 455, in which an opinion was rendered by this Honorable Court on March 1, 1937, and is there-

fore not yet published in the Supreme Court reports. In those cases it appears that the teachers were employed for a period of three years, under yearly formal contracts, after which time they were granted by the statute tenure during good behavior and the Board was prohibited from dismissing a teacher or reducing her salary except for cause upon written charges. The legislature of the State authorized a reduction of salary and the school board, pursuant to such statute, reduced the teachers' salaries. The court held that the original statute was but a mere regulation of the conduct of the Board and did not constitute a continuing contract of indefinite duration with the individual teacher, and in so holding this Honorable Court said:

> "Although after the expiration of the first three years of service the employe continued in his then position and at his then compensation unless and until promoted or given an increase in salary for a succeeding year, we find nothing in the record to indicate that the Board was bound by contract with the teacher for more than the current year. The employe assumed no binding obligation to remain in service beyond that term. Although the act of 1909 prohibited the Board, a creature of the state, from reducing the teacher's salary or discharging him without cause, *we agree with the courts below that this was a mere regulation of the conduct of the Board and not a term of continuing contract of indefinite duration with the individual teacher.*" (Italics supplied.)

We respectfully submit that if a statute such as was before this Honorable Court in the *Phelps* case, *supra,* which prohibited the reduction of salaries or discharge without cause, was but a mere regulation of the conduct of the Board, and if the teacher did not acquire by that statute vested contractual rights in her position or salary, then a

statute such as the Miller Law here before the court is likewise a declaration of a policy or regulation of conduct that may be altered and changed by the State in its discretion.

Moreover, this court has consistently held, without exception, that where a person is placed on a pension roll under a benevolent purpose act such as the one under consideration, which act provides for no fund and for no contribution by beneficiaries, either by deductions from salary or actual payments made into a fund, no contract is created and therefore the grant of such pensions creates no vested rights. This court has always held that the benefits conferred by such acts may be changed, modified or reduced at the discretion of the legislative body which created such benefit. It follows, therefore, that the legislature in enacting the Miller Law of 1935, violated no contractual or vested property rights of any of the appellants in future installments of Miller Law pensions.

Illinois Decisions.

The courts of Illinois following the decisions of this court, notwithstanding counsel's assertion to the contrary, have consistently held that pensions like the one involved in the case at bar are at all times subject to the control of the legislature. This was emphasized by Mr. Justice Stone, who, when rendering the unanimous opinion for the court below, on page 554, said:

> "The doctrine, as we have seen, is thoroughly established in this State that the State may control the giving or taking away of pensions, * * *" (*Dodge* v. *Board of Education,* 364 Ill. 547).

On page 43 of appellants' brief the statement is made that until the decision in the Supreme Court of Illinois

in the instant case, the Illinois law appeared to be settled that an annuity or a pension was not a gratuity but was a vested right, yet in their brief, page 47, appellants set up a list of seven Illinois Supreme Court decisions viz:

Eddy v. *Morgan,* 216 Ill. 437.
Ryan v. *Foreman,* 262 Ill. 175.
Pecoy v. *Chicago,* 265 Ill. 78.
Stiles v. *Board of Trustees,* 281 Ill. 636.
People v. *Retirement Board,* 326 Ill. 579.
People v. *Hanson,* 330 Ill. 79.
McCann v. *Retirement Board,* 331 Ill. 193.

which they concede hold that pensions are bounties springing from the graciousness of the sovereign which may be given or taken away at the discretion of the legislature.

Appellants' case here is the same as it was in the court below, and is stated in the opinion of that court at page 550 as follows:

> "As is stated by counsel for appellants in their reply brief: 'Appellants' case rests upon the proposition that they have vested property rights to the payment of future installments of the annuities on the basis fixed by the law in force at the time they retired, or being entitled to retire made application for retirement.'"

The Supreme Court of Illinois has many times been called upon to construe pensions and has without exception consistently held that there are no vested rights in future installments of pensions.

The leading case on this proposition is *Beutel* v. *Foreman,* 288 Ill. 106. In this case it appears that one Beutel, on March 31, 1917, after having completed a service of

twenty (20) years as a member of the police force, filed application for a pension. On July 12, 1917, his application was denied on the ground that the Police Pension Fund Act as amended on July 1, 1917, provided that no policeman should be pensioned after a service of twenty (20) years until he should have reached the age of fifty (50) years. Beutel had not reached the age of fifty (50) years on July 1, or on July 12, 1917. It was therefore contended that under the amendment to the Pension Act effective July 1, 1917, he was not entitled to receive a pension.

It will be noted that the Pension Act in force prior to July 1, 1917, contained no fifty (50) year age requirement. In other words, the Pension Act in force on March 31, 1917 (the date of Beutel's application and the date according to appellants' theory when rights vest) did not require that the pensioner be fifty (50) years of age at the time of retirement. The amendment of July 1, 1917, did make such requirement.

It was earnestly contended in that case, as in the case at bar, that the event happened which vested his right to the pension on March 31, 1917 (petitioner having served the required period entitling him to a pension), before the law was revised; that he had made his application for retirement and hence the legislature could not take away that vested right to receive a pension by subsequent legislation without violating his vested property right protected by the Constitution. The court stated the position of the petitioner in that case as follows (page 109):

> "Counsel for defendant in error earnestly insist that the Pension act in force previous to July 1, 1917, gave him a contract and property right in his pension at the time he filed his application for the same, and therefore the amendment in question must be held to

be unconstitutional because of violating a property right vested in him."

Counsel in the case at bar contend that since the teachers had completed the service, which under the old Miller Law entitled them to $1,500 pensions, they acquired fixed rights under it which could not be changed without violating the state and federal constitutions.

In the *Beutel* case, the police officer also had completed the service required under the law then in force and several months before it was changed had filed his application for the pension provided by the Act.

In holding that no constitutional right of the claimant was violated by the legislature, the court, on page 109, said:

> " 'But a right to be within its protection must be a vested right. It must be something more than a mere expectation, based upon an anticipated continuance of the existing law.' "

On page 112 the court further stated:

> "A full discussion of the question of vested rights in pension funds is found in *Gibbs* v. *Minneapolis Fire Department Relief Ass'n,* 37 Ann. Cas. 1915C, 749, (125 Minn. 174) and in the exhaustive note following the opinion. It was argued there, as here, that the right of a person claiming a pension was a vested one, and the opinion quoted from another decision with approval, as follows: 'The statute differs from a contract in that the government may withdraw the benefits conferred at any time it may deem advisable after a party enters the service, either before or after the right to a pension accrues. * * * It also follows that while there is no vested right in a pension which cannot be divested by the mere exercise of the legislative will, if relators have any rights they are vested ones so long, only, as the statute in question remains in force and unchanged, subject to be divested at any

time that Congress may desire.' See also, *Stevens* v. *Minneapolis Fire Department Relief Ass'n.*, 50 L. R. A. (124 Minn. 381,) 1018, and note reviewing the authorities; 21 R. C. L. 242; 2 McQuillin on Mun. Corp. sec. 511; 5 *id.* sec. 2422.

We can reach no other conclusion in this case than that by the great weight of authority in this and other jurisdictions, as between the State and the members of the police department of one of the municipalities in this State, the State may take the right of pension away, under such circumstances as shown by this record, without affecting the contract right of the pensioners or violating the constitution."

The Illinois Supreme Court had occasion in *People* v. *Hanson,* 330 Ill. 79, to reiterate with approval the principles laid down in the *Beutel* case, *supra.*

In the *Hanson* case plaintiff in April, 1917, after having completed 20 years of service, made application for pension pursuant to the law in force at that time which provided for pension equivalent to one-half of officer's salary upon completion of 20 years of service. In June, 1917, the Act was amended by the legislature effective July 1, requiring applicant to be 50 years old. On July 12, 1917, the trustees denied his application as he was not 50 years old. In February, 1918, the Board placed his name on the roll from the date of his retirement until June 30, 1917. In September, 1921, the petitioner and others similarly situated entered into a compromise agreement whereby in consideration of the payment of a sum of money they released their claims to all back pensions and were reinstated on the pension roll as of August 1, 1921, and pensions were to be paid to them continuously thereafter.

The pension was paid to petitioner until June 29, 1925, when the Board struck his name off the roll and directed

no further money be paid to him until he paid back all money paid him for the period prior to his attaining 50 years of age. This was done pursuant to an amendment passed in 1925, authorizing the Board to retain out of future payments any money paid to a pensioner through misrepresentation, fraud and error.

As stated by the court in its opinion (page 84), the questions of law raised were:

1. Was petitioner's right to a pension an expectancy, or did it become a vested right under the law in force at the time of his retirement and application for a pension?
2. Was the compromise agreement of September, 1921, an accord and satisfaction?
3. Was the Act of 1921 in violation of section 13 of Article 4 of the Constitution?
4. Was the amendatory Act of 1925 constitutional?

The court, on page 89, held:

> "The objection in the *Retirement Board* case to the amendment of 1925 was, that it contravened section 1 of the fourteenth amendment to the constitution of the United States and section 2 of article 2 of the constitution of this state. The court said: 'This contention cannot be sustained. As against the State or its political subdivisions there is no vested right in a pension accruing in the future from month to month. (*Beutel* v. *Foreman,* 288 Ill. 106; *Gibbs* v. *Minneapolis Fire Department Relief Ass'n,* 125 Minn. 174, 145 N. W. 1075.) A pension is a bounty springing from the appreciation and graciousness of the sovereign and may be given or withheld at its pleasure. (*Eddy* v. *Morgan,* 216 Ill. 437.) There is no contract on the part of the State to continue the payment of a benefit or annuity, and a change in the law affecting such benefit or annuity does not impair the obligation of a contract or deprive a person of property without due process of law within the meaning of the consti-

tutional provisions invoked.—*Pennie* v. *Reis*, 132 U. S. 464, 10 Sup. Ct. 149; *Pecoy* v. *City of Chicago*, 265 Ill. 78.'"

The court, in discussing the question as to whether the compromise agreement of 1921 was an accord and satisfaction, of necessity had to consider whether or not any contract rights were involved, and in holding that there were none, on page 91 said:

> "By the compromise agreement of September, 1921, petitioner and others similarly situated accepted a much less sum to be prorated among them than they claimed was due and released the retirement board from all claims on account of back pensions from July 1, 1917, to August 1, 1921. Counsel for petitioner insist the law relating to accord and satisfaction is applicable and that the compromise agreement should be sustained under the law relating to that subject. We do not think the doctrine of accord and satisfaction applicable to this character of cases. This court has repeatedly held that no contract right of petitioner existed. Petitioner's claim did not arise out of a contract or from an alleged tort. 'An accord and satisfaction is a method of discharging a contract or settling a cause of action either from a contract or a tort, by substituting for such contract or cause of action an agreement for the satisfaction thereof and an execution of such substituted agreement.'"

The Illinois Supreme Court again passed upon the question whether or not there was a vested right in future installments of pensions in the case of *McCann* v. *Retirement Board*, 331 Ill. 193. In that case, McCann filed a petition for writ of mandamus against the Retirement Board to compel it to pay him a pension of $1,750 annually, which was fifty per cent of his salary at the time of his retirement. This claim was based upon Section 55 of an Act which was in effect at the time he retired.

On October 1, 1923, he was retired under the Act of 1921 then in effect at a pension of $1,750 annually, which was paid until November, 1924. Then the Board reduced the annuity to $1,300 annually, the maximum pension permitted to be paid pursuant to a subsequent amendment.

The court held on page 200:

> "The amendment of 1927 was, and was intended to be, retroactive, and by it no policeman who resigned or was discharged prior to July 1, 1927, was entitled to be paid an annuity or pension computed or based upon any salary in excess of $2600. The right to a pension is not a vested right. *People* v. *Retirement Board*, 326 Ill. 579; *Beutel* v. *Foreman*, 288 *id.* 106; *Pecoy* v. *City of Chicago*, 265 *id.* 78; *Hughes* v. *Traeger*, 264 *id.* 612."

In each of the Illinois cases we have cited, the pension statutes created a fund out of which the pension involved should be paid and it was claimed that a vested interest in that fund existed. The courts held to the contrary. It must be borne in mind that the Miller Law created no pension fund and that there is no fund in which the appellants can claim a vested interest.

The case of *People ex rel. Donovan* v. *Retirement Board*, 326 Ill. 579, cited with approval in the *McCann* case, was a mandamus suit against the Retirement Board of the Policemen's Annuity & Benefit Fund of Chicago to restore the widow of a policeman to a pension roll and pay her compensation as provided by the Act of 1921.

Though the court held that the appellee was entitled under the facts in the case to the compensation annuity as opposed to the finding of the pension board, nevertheless it adhered to the long established line of cases holding that the legislature had the right to amend a pension act pro-

viding for payment of installments in the future, and on page 582 said:

> "Appellee contends that this section, insofar as it affects awards made prior to July 2, 1925, contravenes section 1 of the fourteenth amendment to the constitution of the United States and section 2 of article 2 of the constitution of this State. This contention cannot be sustained. As against the State or its political subdivisions there is no vested right in a pension accruing in the future from month to month. (*Beutel* v. *Foreman*, 288 Ill. 106; *Gibbs* v. *Minneapolis Fire Department Relief Ass'n*, 125 Minn. 174, 145 N. W. 1075.) A pension is a bounty springing from the appreciation and graciousness of the sovereign and may be given or withheld at its pleasure. (*Eddy* v. *Morgan*, 216 Ill. 437.) There is no contract on the part of the State to continue the payment of a benefit or annuity, and a change in the law affecting such benefit or annuity does not impair the obligation of a contract or deprive a person of property without due process of law within the meaning of the constitutional provisions invoked."

Notwithstanding the unequivocal language used in the long line of cases just cited, which consistently adhere to the principle that there is no vested right in a pension accruing in the future from month to month, counsel contend that expressions used by the Illinois Supreme Court in holding general pension laws valid are to be construed as indicating a departure from such principles. In support thereof they cite *Hughes* v. *Traeger*, 264 Ill. 612, *People* v. *Abbott*, 274 Ill. 380, *Porter* v. *Loehr*, 332 Ill. 353, and *DeWolf* v. *Bowley*, 355 Ill. 530.

In the case of *Beutel* v. *Foreman*, 288 Ill. 106, the court in disposing of a similar argument made by counsel in that case, at page 110 said:

"Counsel are in error in their argument that the decisions of this court last referred to (*Hughes* v. *Traeger,* 264 Ill. 612, *People* v. *Abbott,* 274 id. 380) intended to hold that the right of a pension was a vested right."

The court in the *Beutel* case went on to say that the court had particularly stated the opposite and cited numerous cases to show that by the use of such language, it was not intended to hold that there was such a thing as a vested right in a pension. The opinion in the case of *Beutel* v. *Foreman, supra,* was written by the same justice who wrote the opinion in the *People* v. *Abbott* case, *supra.*

The case of *Porter* v. *Loehr,* 332 Ill. 353, does not involve the question of decreasing a pension but merely decides that a pension or an increase in pension cannot be given to a person who is no longer in the service, because it is an extra compensation and therefore in violation of Section 19 of Article IV of the Constitution of Illinois, which prohibits the General Assembly from granting or authorizing extra compensation, fee or allowance to any public officer, agent, servant or contractor after service has been rendered or a contract made. What the court did say about pensions appears on page 359 as follows: "The establishment and maintenance of a system of pensions is not a public duty or obligation—it is merely a question of policy, to be determined by a lawmaking body." This case does not hold directly or indirectly that there is any vested property right in future pension installments.

In the case of *DeWolf* v. *Bowley,* 355 Ill. 530, cited by appellant, there was no question of vested property rights or power to alter, reduce or withdraw a pension.

The Supreme Court of Illinois in a very recent decision (rendered since its opinion in the case at bar), *Raines* v.

Board of Trustees Pen. Fund, 365 Ill. 610, construed an act of the Illinois Legislature of 1935 amending the Illinois State Teachers' Pension and Retirement Fund Act (Smith-Hurd Revised Statutes, Chap. 122, Par. 578-612), applying to the smaller school districts and cities in Illinois. In that case it reaffirmed all its previous holdings to the effect that a pension payable solely out of public funds is in the nature of a bounty that may be given, withheld, distributed or recalled at the pleasure of the Legislature.

As this decision is the last word from the Supreme Court of Illinois on the subject of pensions, we take the liberty of quoting at length from the opinion (pp. 614 to 616).

> "The whole difficulty in this case arises from a failure to distinguish between a pension fund and an annuity fund derived in part from voluntary contributions made under a statutory option to contribute or refrain from contributing. A pension is in the nature of a bounty springing from the appreciation and graciousness of the sovereign, and may be given, withheld, distributed or recalled at its pleasure. (*People* v. *Retirement Board,* 326 Ill. 579; *Porter* v. *Loehr,* 332 *id.* 353; *Pecoy* v. *City of Chicago,* 265 *id.* 78.) For this reason it is held that a pensioner has no vested right in a pension fund. It has also been held that the character of a pension fund is not changed by compulsory contributions by way of exactions from the salaries or wages of public officers and employees. It is said that such payments into the fund are not in fact payments by the officer or employee, and the employment is accepted with knowledge that certain amounts will be deducted each month and placed in the pension fund; that the money is not first segregated from the public fund so as to become private property and then turned over to the pension fund, but is set aside or transferred from one public fund to another, and remains public money over which the person from whose salary it is

deducted has no control, and in which he has no right. *Pecoy* v. *City of Chicago, supra; Hughes* v. *Traeger,* 264 Ill. 612; *Pennie* v. *Reis,* 132 U. S. 464, 33 L. ed. 426; *State* v. *Policemen's Pension Fund,* 121 Wis. 44, 98 N. W. 954.

Because of these principles, we have held that policemen from whom compulsory contributions had been exacted by statute for a police pension fund, and who had retired on a pension, were not entitled to an increase thereof under a statutory amendment adopted after their retirement. (*Porter* v. *Loehr, supra; People* v. *Abbott,* 274 Ill. 380.) We pointed out that such an increase is an appropriation of public funds for the benefit of individuals and a gift or gratuity having for its sole basis or justification the services rendered prior to their retirement; and that such an allowance violates section 19 of article 4 of the Constitution prohibiting extra compensation, fee or allowance to any public officer, agent or servant, after the service is rendered. Such holdings are predicated upon the nature of the fund as being purely a pension fund unchanged in its nature by compulsory so-called contributions. Such a fund remains at all times public money to be dispensed as a gratuity or withdrawn at will devoid of any right in the pensioner.

There is a wide difference between voluntary contributions to a fund under a statutory elective right and being compelled to suffer deductions without any such right. In the latter case the officer or employee has no voice in determining whether or not he will suffer such exactions. They are imposed by the statute and deducted even if against his will. In the other case it is wholly a matter of choice with him. He may elect to come within the terms of the act and receive its benefits, or he may forego that privilege at his option, with no other effect than to deprive him of participating in the fund. If he does not elect to contribute, he receives and retains the full amount of his salary or wages. If he elects to contribute, the amounts are deducted by his direction. The effect is the same as if his full salary were paid to him and after it became his pri-

vate means he in turn contributed to the retirement fund. In such case there is neither reason nor authority to hold that the fund remains public money in which he has no right or interest.

Under statutes creating teachers' retirement funds by which it is optional with the teachers to come under their provisions by having a certain sum deducted from their salaries, it is held that the election to participate in the fund raises a contractual relation, the terms of which are ascertained by reference to the statute. *Ball* v. *Board of Trustees of Teachers' Retirement Fund,* 71 N. J. L. 64, 58 Atl. 111; 24 R. C. L. Schools, sec. 79; *In re Sanborn,* 159 Wash. 112, 292 Pac. 259."

In *Dodge* v. *Board of Education, Beutel* v. *Foreman, People* v. *Hanson, People* v. *Retirement Board* and *Raines* v. *Bd. of Trustees Pen. Fund, supra,* the Supreme Court of Illinois has consistently held that as against the State or political subdivision, there is no vested right in a pension accruing in the future from year to year as provided for under the Miller Law and there is no contract on the part of the State to continue the payment of such a pension. The change in the law affecting such pension does not impair the obligation of a contract or deprive a person of property without due process of law within the meaning of the constitutional provisions invoked by appellants.

No case in Illinois overrules or modifies the principles laid down by the case of *Beutel* v. *Foreman,* 288 Ill. 106. These principles are affirmed in all of the pension cases involving the question of vested rights which have been determined by the Illinois Supreme Court since that decision was handed down. In the instant case the court below as we pointed out heretofore, stated that "The doctrine as we have seen is thoroughly established in this State

that the State may control the giving or taking away of pensions." All of the pension cases in Illinois, we respectfully submit, uniformly hold (a) that pensions payable solely out of public money are not based on contracts, (b) that future installments of such pensions are not vested property rights, (c) that they are mere expectancies based on anticipated continuation of existing law and (d) that the State may reduce future installments of such pensions without violating the provisions of the State or Federal Constitution.

Decisions in States Other Than Illinois.

The courts of other jurisdictions are in accord with the rule laid down by the Supreme Court of Illinois in conformity with the decisions of this Court and hold that there are no vested rights in future installments of pensions payable solely out of public moneys.

In Ohio pensions are held to be gratuities and not contracts creating vested rights. The leading case on that subject is *Mell* v. *State, ex rel.*, 130 Ohio St. 306 (decided December 18, 1935). The question involved in that case was whether the Board had a right to reduce the pensions of those already on retirement.

The Supreme Court of the State of Ohio held that a pension was a gratuity, subject to the control of the donor and such pension was created by law rather than by contract and granted to the relator no vested rights. In so holding the court said on page 309:

> "A pension is generally defined as a gratuity, at all times subject to the will of the donor. It is a creature of law rather than of contract, and the pensioner has no vested right in the continuance of a gratuitous allowance.

'The unquestioned rule is that a pension granted by the public authorities is not a contractual obligation but a gratuitous allowance, in the continuance of which the pensioner has no vested right; and that a pension is accordingly terminable at the will of the grantor, either in whole or in part.' 21 Ruling Case Law, 242. See also *Walton, Admr.* v. *Cotton,* 60 U. S. (19 How.), 355, 15 L. Ed. 658; *United States* v. *Teller,* 107 U. S. 64, 2 S. Ct., 39, 27 L. Ed., 352; *Pennie* v. *Reis,* 132 U. S. 464, 10 S. Ct., 149, 33 L. Ed., 426; *Frisbie* v. *United States,* 157 U. S., 160, 15 S. Ct. 586, 39 L. Ed., 657; *Gibbs* v. *Minneapolis Fire Dept. Relief Assn.,* 125 Minn., 174, 145 N. W., 1075, Ann. Cas., 1915C, 749, and note.

'Pensions * * * are gratuities. They involve no agreement of parties; and the grant of them creates no vested right.' *Lynch* v. *United States* (1934), 292 U. S. 571, 54 S. Ct., 840, 78 L. Ed., 1434. To the same effect, *Gibbs* v. *Minneapolis Fire Dept. Relief Assn., supra.*''

The court further said that pensions are gratuities even where the pensioner had made compulsory contributions to the fund (quoting *Pennie* v. *Reis, supra*), and held that the right to a pension not being a vested one a pension board could in its discretion modify or alter the pension, and in so holding on page 310 said:

''The right to a pension not being vested, the board has a right at any time, in its discretion, to modify or alter pension awards by increasing or decreasing them, so long as it acts reasonably and not in an arbitrary fashion. This right the board may exercise pursuant to and under its own rules and regulations then prevailing, and, in the absence of abuse, mandamus will not issue to control its discretion.

The board has not acted illegally in effecting a reduction of relator's pension. We find no abuse of discretion.''

This holding was reaffirmed by the Supreme Court of Ohio in a decision rendered April 29, 1936, in the case of *State, ex rel.* v. *Zupnik,* 131 Ohio St. 94.

In the case of *Rudolph* v. *United States, ex rel. Stuart,* 36 App. Cases, D. C. 379, at page 384, the court said:

> "The statute differs from a contract in that the government may withdraw the benefits conferred at any time it may deem advisable, after a party enters the service, either before or after the right to a pension accrues. * * * It also follows that, while there is no vested right in a pension which cannot be divested by the mere exercise of the legislative will, if relators have any rights, they are vested ones so long only as the statute in question remains in force and unchanged, subject to be divested at any time that Congress may desire."

In Kentucky the holding is the same. In *Head* v. *Jacobs,* 150 Ky. 290, it appeared that a pension act was adopted March 3, 1904, providing for pensions to policemen. The relators were on pension under that act. In 1912 the General Assembly passed an act repealing the former Act and enacting another law which was to take the place of it, and provided that all pensions then in force under the law theretofore existing be declared ended and abolished. It further provided that the pensions and benefits under the old Act be continued as such by the Board organized under the new Act, if, under the terms of the new Act they would be entitled to apply for and receive pensions or benefits. The Board of Pensions declined to transfer the relators to the new roll and they brought suit to compel the Board to do so. The only question to be determined was whether the applicants were entitled as a matter of right to be transferred to the new pension roll.

The court held that they had no such right and said on page 293:

> "A pensioner has no vested right to his pension; the legislature which created it can recall its bounty at its discretion (22 Am. & Eng. Ency., 658). The act of 1912 taken as a whole shows a clear legislative purpose to allow no pension except to those disabled by reason of service in the department where the disability was contracted through such service, and to commit to the discretion of the board the question, what existing pensions should be transferred to the new roll."

We have pointed out heretofore that all the pension installments which accrued under the Miller Law, as in force prior to the amendment in July, 1935, had been paid in full.

The Supreme Court of the State of New Jersey points out in the case of *Passaic National Bank & Trust Company* v. *Eelman*, 116 N. J. Law, 279, 183 A. 677, that the obligation to pay the periodic installment of pensions continues only by force of the statute, and that the legislature may repeal or modify it and thus relieve itself of payments which might arise *in futuro*. This we contend is the effect and the result sought by the pasasge of the Miller Law in 1935.

The court, in distinguishing between past due or accrued installments where rights vest and future installments of pensions where no rights vest said on page 680 (183 Atl.):

> "* * * The rule is that compulsory deductions from the salaries of government employees, by the authority of the government, for the support of a pension fund, creates no contractual or vested right between such employees and the government, and neither the employees, nor those claiming under them, have any rights except as are conferred by the statute creating and governing the fund. But where the pension in-

> stallments mature, the right of the pensioner to payment thereof vests. *Plunkett* v. *Board of Commissioners of Hoboken*, 113 N. J. Law, 230, 173 A. 923, affirmed 114 N. J. Law, 273, 176 A. 341; *Pennie* v. *Reis*, 132 U. S. 464, 10 S. Ct. 149, 33 L. Ed. 426. This is an obligation imposed by the subsisting statute maintaining and governing the pension fund, and logically falls into the category of obligations enforceable in an action of debt at the common law."

With reference to the termination of the right to future installments of pensions the court said on page 680 (183 Atl.):

> "While the pension statute subsists, the obligation to pay the periodic installments continues by force thereof. I can perceive no rational basis for a distinction, in respect of this special execution statute, between installments payable under the Pension Act and a contract of hire. The obligation to pay the pension is fixed while the statute exists. While the Legislature may repeal or modify the act, and thus terminate the pensioner's right to unaccrued installments, so may the private employer terminate the contract of hire for an indefinite term, and thus relieve himself of obligations to arise *in futuro*. But the installments of salary or wages that may accrue while the contract subsists are nevertheless subject to this form of execution."

Appellants cite California cases in support of their contention that the courts of California are not in accord with the general rule that pensions are mere bounties, and not subject to the control of the legislature. The reason for such a ruling is made clear in the California case of *Dryden* v. *Board of Pension Commissioners of the City of Los Angeles, et al.*, 6 Cal. (2d) 575, 59 Pac. (2nd) 104.

It is apparent that in California the employees actually contribute to a fund and that this contribution is made an

integral portion of the contract of employment. Thus the court on page 578 said:

> "The deceased was a member of the police department for approximately fourteen years before his death, during the entire period of which he paid his required 4 per cent of each salary check received. A pension based upon such facts is not a gratuity. It is a periodical allowance of money granted by the city in consideration of services rendered or of loss or injury sustained, and payments actually made for that purpose."

Another case cited by appellants is *Casserly* v. *City of Oakland,* 6 Cal. (2d) 64. It appears in that case that the fund out of which the pensions were paid was made up in part by contributions of the pensioners. The court held that the amount of the pension received on retirement was not vested so as to prevent a subsequent reduction.

Appellants cite the case of *Lage* v. *City of Marshalltown,* 212 Iowa 53, as holding that a similar statute to the statute involved herein creates vested contractual rights. This decision in no way supports that contention. The facts differ materially from those in the case at bar. In the *Lage* case, the pension law under which plaintiff claimed money was still in full force and effect, never having been revised, repealed or amended, and the only question involved was the right of the plaintiff to recover in assumpsit for a past due pension installment unpaid because of the failure of the city to make the necessary tax levy for that purpose.

The court held that inasmuch as the right to the payment of an installment of a pension was not based upon a contract, that such action would not lie and that the remedy was in mandamus to compel the levy of a tax for pension purposes.

Appellants cite the case of *State ex rel. Stafford* v. *State A. & I. Board,* 219 Wis. 31, in support of their theory that pensions cannot be reduced by a subsequent statute without impairing the obligation of a contract created under the prior statute. An examination of this Wisconsin case discloses that this question was in no way before the court. There was no second statute which it was claimed impaired the obligation of a prior one. The only point involved was whether or not the pension fund was liable to the estate of a deceased employee for the amounts the employee had paid into the fund during his lifetime. The court held that the fund was discharged from any liability upon the death of the contributor.

Another case cited by appellants in support of their theory of vested rights in pensions is *Retirement Board* v. *McGovern, et al.,* 316 Pa. 161. The case states that where the pension is payable out of a contributed reserve retirement system the law is different. (The Miller Law does not provide for any such fund and no contributions are made.) On this point the court on page 170 said:

> "Where an allowance is made out of hand, gratuitously, and purely for past services, by the government, it is a pension, with all the attributes of a pension; but where the employee contributes a part of his salary or wages with a sum from the State or county under a quasi contractual relationship with the municipality or State, creating a contributed reserve retirement system, the results are different, retirement pay made therefrom is not a pension: the contributions by the government, from their very nature, must be viewed in a different light."

The case of *Fellows, Attorney General* v. *Connelly,* 193 Mich. 499, cited by appellants, we respectfully submit throws no light whatsoever upon the issues in the case at

bar. The effect of subsequent acts of the general legislature was in no way involved. The point before the court was the legality of an act requiring contributions from teachers to a pension fund.

Renz v. *Hibbing Firemen's Relief Association*, 186 Minn. 370, cited by the appellants as a case construing a similar statute and holding that a vested right is created by such statute, we submit does not support such a contention. First, because the pension fund there involved was one to which the pensioner contributed, and second, because it did not involve a revision or change in a pension statute. The only question in that case was whether the pension board under its by-laws, which provided, among other things, "trustees shall have power to wholly revoke and annul the same whenever the physical condition which was the cause of the pensioning of such member, no longer exists" had the power to revoke or annul a disability pension previously allowed, and to require that the pensioner prove that his physical condition was such as to entitle him to continue to receive the pension. The court held that the burden of proving that there had been a change in the pensioner's condition warranting a revocation of the pension was on the trustees and his pension could not be taken away from him without giving him an opportunity to be heard.

Kavanagh v. *Board of Police Commissioners*, 134 Cal. 50, cited by appellants, is a case involving a pension where the particular payment was past due and unpaid when the statute was amended. It is conceded that there were no past due and unpaid installments of pensions when the Miller Law became effective.

Trotzier v. *McElroy,* 182 Ga. 719, involves a pension payable out of a fund to which the petitioner had contributed one per cent of his salary during the time he was employed whereby as the court points out in the quotation on page 724, "the right acquired by the firemen are analogous to those possessed by members of mutual benefit societies. 28 Cyc. 555." We believe that nothing further need be said with reference to this case.

To the same effect is *Roddy* v. *Valentine,* 268 N. Y. 228, cited by appellants. There the pensioner had made contributions into the fund from which the pension was paid.

Bowler v. *Nagel,* 228 Mich. 434, cited by appellants, merely holds that the municipality had not the power to provide old age pensions for employees; that this authority must be conferred by statute.

In *Matter of Mahon* v. *Board of Education,* 68 N. Y. App. Div. 154, cited by appellants, the only point involved was the validity of an act conferring a pension upon teachers who had resigned before the pension was created.

Mead v. *Acton,* 139 Mass. 341, involves the validity of an act of the State of Massachusetts providing for the payment of annuities to Civil War soldiers. The court held that the statute was unconstitutional because it authorized the raising of money by taxation for the exclusive benefit of individuals and appropriates for a private purpose money which can only be used for a public purpose.

It is therefore apparent that the decisions of the several states relied on by the appellants do not sustain their claim to contractual vested property rights in the future installments of pensions under the Miller Law as it existed prior to the act of July, 1935. These cases fall into one or more

of the following classes of cases which involved conditions different from those in the case at bar and have no application to pensions such as are provided for under the Miller Law.

1. Where the statute, under which pensioners claim the right, provided for contributions to a regular pension fund. (*Roddy* v. *Valentine,* 268 N. Y. 228, 197 N. E. 260; *Dismuke* v. *U. S.,* 297 U. S. 167; *Trotzier* v. *McElroy,* 182 Ga. 719, 186 S. E. 817; *Retirement Board* v. *McGovern,* 316 Pa. 161, 174 Atl. 400; *Renz* v. *Hibbing Firemen's Relief Association,* 186 Minn. 370, 243 N. W. 713; *Casserly* v. *City of Oakland,* 6 Cal. (2d) 64; *Fellows, Atty. Gen.* v. *Connelly,* 193 Mich. 499.)
2. Where the court merely decided that the legislature by statute had the power to provide for a pension scheme for persons in service and no question of any subsequent act of the legislature was involved. (*Bowler* v. *Nagel,* 228 Mich. 434, 200 N. W. 258; *Matter of Mahon* v. *Board of Education,* 68 N. Y. App. Div. 154; *Fellows, Attorney General* v. *Connolly,* 193 Mich. 499, 160 N. W. 581; *Mead* v. *Acton,* 139 Mass. 341; *State* v. *City of Minneapolis,* 174 Minn. 594; *State* v. *State Annuity Board,* 219 Wis. 31; *State* v. *Love,* 89 Neb. 149; *Cobbs* v. *Home Ins. Co.,* 18 Ala. App. 206.)
3. Where the particular lump sum payment accrued and was past due. (*Kavanagh* v. *Police Commissioners,* 134 Cal. 50; 66 Pac. 36.)
4. Where the act, under which the pensioner claimed a right to his pension, was still in force and had not been changed by subsequent act of the legislature. (*Lage* v. *City of Marshalltown,* 212 Ia. 53, 235 N. W. 761; *Renz* v. *Hibbing Firemen's Relief Association,* 186 Minn. 370, 243 N. W. 713.)

From a review of the decisions cited by both sides to this controversy, we find that in some cases in some states, courts have held that pensioners have vested rights in a

pension fund because they have contributed by salary deductions or by actual voluntary payments into the fund. In some of those jurisdictions, the courts have held that even though there were contributions to a pension fund, the legislature could reduce pensions, because the pensioners had no vested right in the amount of future pension installments. Here there was no fund and no contribution. Under such state of facts, we submit that the overwhelming weight of authority is in accord with the decisions of the Supreme Court of Illinois to the effect that pensions payable solely out of public moneys are not based on contracts but are mere expectancies based on anticipated continuance of existing laws and that future installments of pensions are not vested property rights. It follows that the State may reduce future installments of pensions such as are provided by the Miller Law without violating any provision of the Federal Constitution.

II.

The Miller Law amounts to no more than a declaration of legislative policy on pensions and the acceptance of its benefits does not create a contract.

Before proceeding with the discussion under this heading, we desire to point out that the specifications of error relied on by appellants, appearing on pages 13 and 14 of their brief, disclose that their sole objection to the Miller Law of 1935 is that it violates Section 10 of Article I of the Federal Constitution and the 14th amendment thereto. Their brief, however, intimates that if their contract theory is not accepted, then the pension provisions of the Miller Law violate Section 19 of Article IV of the Illinois Constitution which prohibits the granting of extra compensa-

tion, fee or allowance to any public officer, agent or servant after service has been rendered. We submit that such intimation should be disregarded, as that question is not involved in this appeal.

Appellants assert that they were assured by the 1917 amendments to the General School Law and by the decision in the case of *Armstrong* v. *City of Chicago,* 247 Ill. App. 584, of permanency of position or tenure in office. They therefore conclude that the Miller Law purported to be an offer to waive what the appellants considered to be permanent tenure of office. In other words, they base their contract theory on the assumption that having once granted tenure in office the legislature was powerless to change that status and passed the Miller Law to get the teachers to waive that right.

We respectfully submit that the right of the legislature to provide for compulsory retirement of teachers at the age of 70 under the Miller Law of 1926 or at age 65 under the 1935 Act, has never been contested by any of the appellants, nor is that question involved here. In appellants' brief filed in the Supreme Court of the State of Illinois, the appellants stated on page 62: "These appellants do not question the right of the legislature to lower the compulsory retirement age." Nor is it contended in their brief filed in this court that Section 1 of the Miller Law providing for compulsory retirement is invalid.

By Section 1 of Article 8 of the Illinois Constitution, The General Assembly is charged with the duty of establishing and maintaining a system of free schools whereby all children of this State may receive a good common school education. The method of conducting the schools, the employment of teachers, principals, attorneys and other em-

ployes and the determination of which of them and under what conditions they shall be employed or have tenure, the making of provisions for funds for establishing and maintaining the schools are thus committed to the legislature. The power to make such changes as the legislature deems advisable is necessarily a continuing one.

The courts have repeatedly held that the public schools were not created nor are they supported for the benefit of the teachers therein, as implied by the contention of the appellants. Such schools are maintained for the benefit of the pupils and the resulting benefit to their parents and to the community at large (*Bates* v. *Board of Education,* 139 Cal. 145). Even the taxpayers' interests must receive consideration.

In the past the legislature has many times changed the method of operating the public school system. It has created boards of trustees, changed their terms of office and prior to the Otis Law, provided that teachers should be employed for a period of one year only and then by contract. In 1917 the legislature passed the Otis Law reducing the number of members of the Board and changing many other provisions of the statute relative to the maintenance of the schools in Chicago including the provision for the contract method of hiring. It also provided for the so called "tenure of office."

The broad powers and discretion of the legislature in the matter of school affairs have frequently been recognized by the Illinois courts as well as by this court.

In *Keime* v. *Community High School District,* 348 Ill. 228, the court in defining the powers of the General Assembly relative to schools said on page 234:

> "School districts are quasi-municipal corporations, are subject to the plenary control of the legislature,

> and the latter body may from time to time, in its discretion, abolish school districts, or enlarge or diminish their boundaries *or increase, modify or abrogate their powers.* (24 R. C. L. Par. 6, p. 563.) (Italics supplied.)

Appellants assert that the case of *Armstrong* v. *City of Chicago,* 247 Ill. App. 584, supports their claim of permanency in office. We submit that on the contrary, it sustains the validity of the retirement provisions of the Miller Law.

In that case, certain teachers and principals, some of whom are appellants here, filed suit to declare invalid a resolution of the Board of December 9, 1925, which caused their retirement at 70 years on the ground that the Board had no legislative authority so to do.

The court reinstated the complainants because there was no legislative authority granting such power to the Board. It further held that inasmuch as the Miller Act had become a law in the interim the restoration of the teachers was subject to its provisions.

In so holding the court said on page 599:

> "Accordingly, such decree is reversed and the cause is remanded to the Circuit Court with directions that it enter a decree directing the Board of Education to restore complainants to their respective positions as principals and teachers in the Chicago Public Schools, as of the date of their retirement or removal therefrom by said Board about January 30, 1926, *but that their tenure in said positions be subject to the provisions of said 'Miller Act' as originally in force on May 19, 1926, and as amended on June 24, 1927.*" (Italics ours.)

We believe that the law is too well settled to require an extended citation of authorities on the proposition that offices or employments created by statute are wholly within the control of the legislature which may at pleasure create

or abolish them, modify their duties, shorten or lengthen their terms, increase or diminish their salary or change the mode of compensation. (*U. S.* v. *Hartwell,* 6 Wall. 385; *Hughes* v. *Traeger,* 264 Ill. 612.)

This principle of law was adhered to by this court in the recently decided case of *Phelps* v. *Board of Education of the Town of West New York, et al., supra,* when it stated that:

> "The position of the appellants is that by virtue of the Act of 1909 three years of service under contract confer upon an employe of a school district a contractual status indefinite in duration which the legislature is powerless to alter or to authorize the board of education to alter. The Supreme Court holds that the Act of 1909 'established a legislative status for teachers, but we fail to see that it established a contractual one that the legislature may not modify * * * The status of tenure teachers, while in one sense perhaps contractual, is in essence dependent on a statute, like that of the incumbent of a statutory office, which the legislature at will may abolish, or whose emoluments it may change.'"

and proceeded to affirm the decision of the Supreme Court of the State of New Jersey.

It is apparent therefore that the legislature has the power not only to create an office or employment but it likewise has the power to change or modify the tenure of that office. Since the legislature of Illinois had the power to provide for compulsory retirement of teachers, the retiring teachers had no absolute or vested right to continue to teach and therefore none to waive. The legislature derived its power to control teachers' tenure from the Constitution of Illinois (Sec. 1, Art. VIII) and not from any contract with individuals (teachers).

We therefore respectfully submit that the provision made by the legislature for the additional or Miller Law pension was not an offer to enter into a contract but a declaration of policy.

Notwithstanding this settled rule that the legislature at all times is in control of such matters as tenure and pensions, appellants urge that they are entitled to consideration because they say that they gave up permanent teaching positions with salaries largely in excess of the pensions received by them on retirement. This is not substantiated by the record.

The salaries received by public school teachers in Chicago prior to the acts of the legislature in 1935 are set forth in the answer filed by appellees (R. 115). These figures were not denied in the replication (R. 150). The maximum salary of an elementary teacher, teaching full time in the public schools, was $1912.50. The same teachers upon retiring prior to the 1935 Miller Act received annually two pensions—one for from $800 to $1,000 per annum from the Public School Teachers' Pension and Retirement Fund and another pension of an additional $1,000 to $1500 under the Miller Law. Those compulsorily retired received an aggregate of $2,500. This total of $2,500 was $587.50 more per year than was received by the active teacher who was in the highest elementary salary group. The salary of a teacher in the lower group, that is in the first year of service was $1127.50. The retired teachers performing no service whatever therefore received a pension aggregating $1372.50 more per year than the salary of a teacher in the lower group (R. 115).

Of the 945 appellants in the case an overwhelming majority were retired elementary school teachers. None of the

retired elementary teachers testified. However two high school principals named Armstrong and Dodge and one high school teacher named Keehn and one elementary school principal named Reynolds testified. Only one of them retired voluntarily (R. 184-186).

Of course, these were among the highest paid members of the teaching force.

We respectfully submit that these four instances do not disprove the statement of appellees, that the great majority of retired teachers received from $587.50 to $1372.50 per annum in excess of the annual salaries of the active elementary teachers as a result of adding the Miller Act pension to the pension received on retirement from the Teachers' Pension and Retirement Fund prior to 1935; that with the Miller Act pension reduced to $500 the retired teachers are now receiving, together with the $800 to $1,200 from the regular Teachers' Pension and Retirement Fund, an aggregate of from $1,300 to $1,700 per annum which compares very favorably with the amount received by the average active elementary teacher.

But these considerations of comparative payment to active and to retired teachers it would seem only add another element to a case which is based on theories that are difficult to reconcile. On the one hand, appellants claim that notwithstanding the Miller Law pensions were costing the Board of Education of the City of Chicago over $1,000,000 per year, it procured the removal from service of teachers whose salaries were in the higher brackets and who were induced to retire because of its provisions. (Appellants' brief, 53.) On the other hand, they contend that it operated as an inducement to remain in the service (Appellants' brief, 33) and in support of that theory point out that the

figures made in 1927 by an actuary disclosed that prior to the passage of the Miller Law the average retirement age of teachers was 57, whereas after its passage it was 60. (Appellants' brief, 7.)

While we are unable to determine whether or not appellants based their claims for consideration on the theory that the Miller Law induced continuance in or retirement from service, we point out at this time that the same inducements were operating continuously throughout the same period to the same people because of the provision for pensions under the regular Teacher's Retirement and Pension Fund, viz. relief from further service and receipt of a pension.

In support of their theory that appellants were parties to contracts with the State, they cite *New Jersey* v. *Yard,* 95 U. S. 104. That case involved the determination of the right to change by subsequent legislation, terms of a railroad charter.

The court held that it would look into the intention of the legislature in order to determine whether or not it intended to make a contract or make a law that was subject to repeal.

The facts disclose that the railroad company in 1865 sought an agreement with the legislature to build a branch road or roads and power to acquire right of way and the State wished the question of the right to tax the corporation to be settled; that the company denied the right of the State to tax them under their charter until the road paid a net income of 7% per annum on its costs; that by the terms of the agreement this subject of disagreement was adjusted, additional rights granted and the tax fixed; that the legislature was not willing to rest this contract in

the usual statutory form but required the execution of a complete, formally written instrument evidencing the contract, signed by the Governor and the presiding officers of both houses of the New Jersey legislature for one party, and the president, secretary of the railroad company for the other party.

The court at page 115 said:

> "It does seem as if the legislative intention was to make a contract in the same manner and on the same terms of equal obligation, as other contracts are made, and not to pass a statute which it could repeal or amend the day after it was signed by the parties."

In this case the intention of the legislature to contract with a specific company for a specific purpose can be seen from an examination of the act itself and the principle involved was entirely different from that involved in the consideration of an act where the legislature announces a general course of conduct respecting a subject matter to be pursued until subsequently altered by it because of circumstances or its changed views of policy.

The question of whether or not acts of various State legislatures offering inducements which caused individuals or corporations to expend large sums of money in consequence thereof, constituted contracts has often been before this court for its determination. A much cited case on this subject is *Salt Mfg. Co.* v. *East Saginaw,* 80 U. S. 373, 20 L. ed. 611, which involved an amendment to an act of the General Assembly of the State of Michigan providing that all companies or corporations formed or which might be formed for the purpose of boring for and manufacturing salt in the state, and any and all individuals engaged or to be engaged in such manufacturing should be entitled to

the benefits of the act, providing that all property real and personal used for such purposes should be exempt from taxation and there should be paid from the treasury of the state to any individual company or corporation, the sum of 10 cents for each and every bushel of salt manufactured by such individual company or corporation from water obtained from boring in the state, provided that at least 5,000 bushels of salt were manufactured. The bill filed in the case alleged that the East Saginaw Salt Manufacturing Company was induced because of the encouragement held out by the act, to form a corporation, for the purpose of making experiments to determine whether or not salt could not profitably be made in Michigan and erected the necessary buildings and procured the requisite machinery, drilled and found brine of sufficient strength and purity to warrant the company in proceeding to manufacture salt. The salt was actually manufactured from the salt water obtained and 6,358 barrels of salt, each containing 5,000 thousand bushels was manufactured. Later the act was amended so as to limit the tax exemption to five years from the date of the organization of the company and limited the amount of bounties to be paid to any one individual or corporation to the sum of $5,000.

The court on page 376 said:

> "The question in this case is; Whether any contract was made at all, and, if there was, whether it was a contract determinable at will or of perpetual obligation?"

The court in determining this issue said at page 376:

> "Had the plaintiff in error been incorporated by a special charter, and had that charter contained the provision that all its lands and property used in the manufacture of salt should forever, or during the con-

tinuance of its charter, be exempt from taxation, and had that charter been accepted and acted on, it would have constituted a contract. But the case before us is not of that kind. It declares, in purport and effect, that all corporations and individuals who shall manufacture salt in Michigan from water obtained by boring in that State, shall be exempt from taxation as to all property used for that purpose and, after they shall have manufactured 5,000 bushels of salt, they shall receive a bounty of ten cents per bushel. That is the whole of it. As the Supreme Court of Michigan says, it is a bounty law and nothing more; a law dictated by public policy and the general good, like a law offering a bounty of fifty cents for the killing of every wolf or other destructive animal. Such a law is not a contract except to bestow the promised bounty upon those who earn it so long as the law remain unrepealed. There is no pledge that it shall not be repealed at any time. As long as it remains a law every inhabitant of the State, every corporation having the requisite power, is at liberty to avail himself, or itself, of its advantages, at will, by complying with its terms and doing the things which it promises to reward, but is also at liberty at any time to abandon such a course."

Again the court said at page 379:

"In short, the law does not, in our judgment, belong to that class of laws which can be denominated contracts, except so far as they have been actually executed and complied with. There is no stipulation, express or implied, that it shall not be repealed. General encouragements, held out to all persons indiscriminately, to engage in a particular trade or manufacture, whether such encouragement be in the shape of bounties or drawbacks, or other advantage, are always under the legislative control, and may be discontinued at any time."

In the case of *Wisconsin & Michigan Railway Company*, v. *Powers*, 191 U. S. 378, 48 L. ed. 229, the act which it

was contended was the basis of the contract, is stated in the opinion, p. 384:

> "The alleged contract is contained in a law of May 27, 1893, Section 3, which after levying a specific tax on railroads, provided 'that the rate of taxation fixed by this act or any other law of this state shall not apply to any railway company hereafter building and operating a line of railroad within this state north of parallel forty-four of latitude until the same has been operated for the full period of ten years, unless the gross earnings shall equal $4,000 per mile, except,' etc."

The railroad company was incorporated and constructed the railroad north of parallel 44 and its gross earnings never equalled $4,000 per mile. On June 4, 1897, the state passed a law amending the act of 1893 and levying a special tax upon the property and business of every railroad corporation within the state. The court held that the act of 1893 followed by the building and operating of the railroad did not constitute a contract and in so holding on page 387 said:

> "The broad ground in a case like this is that, in view of the subject-matter, the legislature is not making promises, but framing a scheme of public revenue and public improvement. In announcing its policy, and providing for carrying it out, it may open a chance for benefits to those who comply with its conditions, but it does not address them, and therefore, it makes no promise to them. It simply indicates a course of conduct to be pursued until circumstances or its views of policy change. It would be quite intolerable if parties not expressly addressed were to be allowed to set up a contract on the strength of their interest in, and action on the faith of a statute, merely because their interest was obvious and their action likely, on the face of the law. What we have said is enough to show that in our opinion the plaintiff never had a contract, * * *."

Another case in which it was contended that the statute constituted an offer, which when acted upon ripened into a contract, is the case of *Stanislaus County* v. *San Joaquin & K.'s R. C. & I. Co.*, 192 U. S. 201, 48 L. ed. 406. The act of 1862 which it was contended constituted the offer provided that every company organized as provided therein should have the power granted therein to establish, collect and receive rents, water rents, or tolls, which should be subject to regulation by the board of supervisors of the county or counties in which the works were situated, but which should not be reduced by the supervisor so low as to yield to the stockholders less than 1½% per month upon the capital actually invested.

In 1885, the legislature passed an act providing for the fixing by the board of supervisors of the county of the rates to be collected by water companies. Section 5 of the act authorized the various boards of supervisors to regulate and control water rates that might be charged in their respective counties. The act provided that said boards in fixing such rates should as soon as possible adjust them so that the net annual receipts and profits of said companies so furnishing such water to individuals should be not less than six nor more than eighteen per cent. upon the value of the canals, ditches, flumes and all other property actually used and useful to the appropriation and furnishing of such water. It appeared that the water company at the time of the passage of the last act, had actually invested under the authority of the act of 1862, a capital amounting to $971,113.13 in money in the purchase and construction of its canals and other property actually used in furnishing the water, and that the property was actually worth that amount.

It is alleged that the amendatory act was in violation and repugnant to the provisions of the constitution of the United States. The court said at page 206,

> "The question then arises whether language such as is contained in the 3d section of that act, and which is set forth in the foregoing statement of facts, amounts to a contract, to be protected by the Constitution of the United States. We think it does not.
>
> It seems to us that language of this nature cannot properly be construed as a promise or pledge that the limitation as to rates may not be altered at any time when, in the judgment of the legislature, it may be proper so to do. Water rates which might have been perfectly reasonable at the time of the passage of the act of 1862, although amounting to 1½ per cent per month upon the capital actually invested, might, in the course of years, become exceedingly burdensome to those who used the water, and amount to a very unreasonable compensation to the company for the water it sold."

On page 208, the court said:

> "In our belief, the language of the act of 1862 does not and was not intended to form a contract, but simply amounted to the statement of the then pleasure of the legislature, to so remain until subsequently altered by it. The cases heretofore decided in this court are authority for this view."

We have heretofore pointed out that in Illinois up to and since the passage of the original Miller Act, the Supreme court has consistently held that statutes providing for pensions did not bestow contract rights and could be altered or repealed at the will of the legislature. That being the state of the law we respectfully submit that in passing the original Miller Act the legislature used no language in the act which could be construed as an intention to make a contract but it simply made a declaration of policy subject,

as the Illinois courts had always held, to change as circumstances or policy, or its views might dictate.

III.

The Miller Law is a local public law, purely governmental, and has to do with State governmental objects and not with any private enterprise thereof.

Appellees in their statement opposing jurisdiction and motion to dismiss or affirm, made the point that the judicial construction of the Miller Act was purely local and not Federal, and therefore the decision of the Supreme Court of Illinois thereon is final and not subject to review, citing in support thereof *Atkin* v. *Kansas,* 191 U. S. 207 (48 L. ed. 148) and *Hein* v. *McCall,* 239 U. S. 175 (60 L. ed. 206) and giving supporting quotations from the opinions of this court in both cases.

Appellants in their brief made no reply to this point, and appellees again urge the effectiveness of this point and its decisiveness. The views expressed in the case of *Adkins* v. *Children's Hospital,* 261 U. S. 547, approve this rule. It is there said that while freedom of contract is the general rule and restraint the exception, there are numerous decisions where interference with such freedom has been upheld on various grounds, among which are statutes relating to contracts for the performance of public work. While this case has been overruled, it was overruled on points other than this, and the above principle was not overruled or questioned and is still the law.

Not only will this court follow the opinion of a State court in its construction of a State statute, but should the views of the State court be modified or changed, the new holdings will be followed by this court.

Quoting from *Greene* v. *Lessee of Neal,* 6 Pet. 291, 295-298, 8 L. ed. 402, 404, 405:

> "* * * But the case is very different where a question arises under a local law. The decision of this question, by the highest judicial tribunal of a State, should be considered as final by this court; not because the State tribunal, in such a case, has any power to bind this court; but because, in the language of the court in the case of *Shelby et al.* v. *Guy* (11 Wheat., 361), 'a fixed and received construction by a State in its own courts, makes a part of the Statute law.'
>
> "The same reason which influences this court to adopt the construction given to the local law, in the first instance, is not less strong in favor of following it in the second, if the State tribunals should change the construction. A reference is here made not to a single adjudication, but to a series of decisions which shall settle the rule. * * *"

This court is without power to put a different construction upon a State statute from that adopted by the highest court of the State.

In *Morehead* v. *New York ex rel. Tipaldo,* 80 L. ed. 921, the court in its opinion said:

> "* * * This court is without power to put a different construction upon the state enactment from that adopted by the highest court of the State. We are not at liberty to consider petitioner's argument based on the construction repudiated by that court. The meaning of the statute as fixed by its decision must be accepted here as if the meaning had been specifically expressed in the enactment. *Supreme Lodge, K. P.* v. *Meyer,* 265 U. S. 30, 32, 68 L. ed. 885, 887, 44 S. Ct. 432.
>
> "Exclusive authority to enact carries with it final authority to say what the measure means. *Jones* v. *Prairie Oil & Gas Co.,* 273 U. S. 195, 200, 71 L. ed. 602, 608, 47 S. Ct. 338.

"The standard of 'minimum fair wage rates' for women workers to be prescribed must be considered as if both elements—value of service and living wage—were embodied in the statutory definition itself. *International Harvester Co.* v. *Kentucky,* 234 U. S. 216, 220, 58 L. ed. 1284, 1286, 34 S. Ct. 853.

"As our construction of an Act of Congress must be the law of the United States, so this New York Act as construed by her court of last resort, must here be taken to express the intention and purpose of her lawmakers. *Green* v. *Neal,* 6 Pet. 291, 295-298, 8 L. ed. 402, 404, 405."

Quoting from the opinion in the *Meyer* case, *supra*:

"Under the settled rule of this court, declared so frequently and uniformly as to have become axiomatic, we must accept this decision of the highest court of the State fixing the meaning of the State legislation as though such meaning had been specifically expressed therein. See, for example *Leffingwell* v. *Warren,* 2 Black 599, 603; *Green* v. *Lessee of Neal,* 6 Pet. 291, 297-300. And we follow the state construction even though it may not agree with our own opinion. *Supervisors* v. *U. S.,* 18 Wall. 71, 82; *Shelby* v. *Guy,* 11 Wheat, 361, 367; *Tioga R. R.* v. *Blossburg & Coming R. R.,* 20 Wall 137, 143."

Quoting from the opinion in *Jones, et al., Trustees* v. *Prairie Oil & Gas Co., supra*:

"• • • But apart from that consideration no case yet has gone to the length of undertaking to correct the construction of State laws by State courts. The exclusive authority to enact these laws carries with it final authority to say what they mean. The construction of these laws by the Supreme Court of the State is as much the act of the State as the enactment of them by the legislature. If we thought the decisions cited far more questionable than we do, we nevertheless should bow to them as binding upon a matter of local administration and of only *local concern.*"

We believe that it is well settled by decisions of this court that it is within the province and privilege of the State courts to construe their own statutes and it is no function of the United States Supreme Court to review such decisions, as the Supreme Court is bound by the decision of the State court in regard to the meaning of the constitution and laws of its own state. (*Turner* v. *Board of Commissioners,* 173 U. S. 461, 43 L. ed. 768; *Jackson ex dem. Hart* v. *Lamphire,* 3 Peters 280, 7 L. ed. 679; *Commercial Bank of Cincinnati* v. *Buckingham, Executor,* 5 How. 317, 12 L. ed. 169.)

IV.

Where a statute is claimed to create a contractual right, this court will give weight to the construction of the statute by the courts of the state. Unless such construction is palpably erroneous, this court will accept the construction placed upon such statutes by the state courts.

The court below in unequivocal terms held that the pensions paid under the Miller Law were not based upon contract. On page 550 of its opinion found in 364 Ill. 547, it says:

> "As stated by counsel for appellants in their reply brief, 'Appellants' case rests upon the proposition that they have vested property rights to the payment of future installments of the annuities on the basis fixed by the law in force at the time they retired, or being entitled to retire, or made application for retirement.'"

In deciding adversely to this contention, the court on page 552 said:

> "A right, to be within the protection of the constitution, must be a vested right. It must be something more than a mere expectancy based upon an anticipated

> continuance of an existing law. If before rights become vested in particular individuals, the convenience of the state induces amendments or repeal, such individuals have no cause to complain. * * * The decisions of this court have uniformly been that pensions are not based upon contract but are mere expectancies based upon anticipated continuance of existing law, and that future installments of pensions are not vested property rights. It follows that the state may reduce future installments of pensions without violating the provisions of the state or federal constitution."

This decision is sustained not only by the cases cited in that opinion but the principles announced have been adhered to in all Illinois cases without exception.

In the recent case of *Phelps* v. *Board of Education, supra,* it was contended that under the statute in question there was granted to teachers, permanency in position at fixed salaries which could not be impaired by a subsequent act of the legislature. This contention is identical in principle with that of appellants, who contend that the Illinois statute granted to them permanency of pension at fixed pension rates, which could not be changed by subsequent acts of the legislature.

In order to point out to the court the similarity of the *Phelps* case to the one at bar, we set up in parallel columns the contentions and the State Court decisions in the respective cases:

PHELPS CASE.

1. Appellants contended that the decision of the State Court violated Art. 1, Sec. 10 and Sec. 1 of the 14th Amendment of the Federal Constitution.

2. Appellants contended that the statute pertaining to tenure of teachers prior to its amendment conferred upon teachers a contractual status which the legislature was powerless to alter.

3. Appellants contended that the legislature having provided that the compensation should not be reduced, violated the Constitution when it subsequently reduced or authorized a reduction in compensation.

4. The Supreme Court of New Jersey held that the tenure act of 1909 "established a status for teachers but * * * failed to see that it established a contractual one that the legislature may not modify" and the court further held that "the status of tenure teachers, * * * is in essence dependent on a statute, like that of the incumbent of a statutory office, which the legislature at will may abolish or whose emolument it may change."

DODGE CASE.

1. Appellants contend that the decision of the State Court violated Art. 1, Sec. 10 and Sec. 1 of the 14th Amendment of the Federal Constitution.

2. Appellants contend that the Miller Law prior to its amendment conferred on retired teachers or those who made application for retirement a contractual status which the legislature is powerless to alter.

3. Appellants contend that the legislature having fixed the amount of pension at $1500, violated the Constitution when it reduced it to $500.

4. In the case at bar, the Supreme Court of Illinois held "The decisions of this court have uniformly been that pensions are not based on contract but are mere expectancies based upon anticipated continuance of existing laws, and that future installments of pensions are not vested property rights. It follows that the State may reduce future installments of pensions without violating the provisions of the State or Federal Constitution."

This Court in the *Phelps* case, *supra,* in passing upon the weight that should be given to the decision of the Supreme Court of New Jersey and in affirming it, said:

> "This court is not bound by the decision of a state court as to the existence and terms of a contract, the obligation of which is asserted to be impaired, but where a statute is claimed to create a contractual right we give weight to the construction of the statute by the courts of the state. Here those courts have concurred in holding that the act of 1909 did not amount to a legislative contract with the teachers of the state and did not became a term of the contracts entered into with employes by boards of education. Unless these views are palpably erroneous we should accept them."

In support of this holding this Court cited the cases of *Freeport Water Co.* v. *Freeport,* 180 U. S. 587, 595; *Tampa Water Works* v. *Tampa,* 199 U. S. 241, 243; *Milwaukee Elec. Ry. Co.* v. *Railroad Comm.,* 238 U. S. 174, 184; *Seton Hall College* v. *South Orange,* 242 U. S. 100, 103, *Coombes* v. *Getz,* 285 U. S. 434, 441.

Conclusion.

Since Miller Law pensions are payable solely out of taxes levied annually for educational purposes and the teachers make no contributions whatsoever for such pensions either by deductions from salaries or by voluntary payments for that purpose, we submit that the Illinois Supreme Court properly held that such pensions are not based on contract, but are mere expectancies based on anticipated continuance of existing laws and future installments thereof are not vested property rights. A reduction or change in the pensions, therefore, does not affect any vested right. The holding of the Illinois court is in conformity with all previous decisions of the Illinois Supreme

Court and is in line with the overwhelming weight of authority in other States and the decisions of this court.

We therefore respectfully submit that the motion of the appellees to dismiss the appeal should be allowed, or, in the alternative, that the decree of the court below should be affirmed.

Respectfully submitted,

RICHARD S. FOLSOM,
FRANK S. RIGHEIMER,
Attorneys for Board of Education of the City of Chicago, Appellee.

BARNET HODES,
Corporation Counsel of the City of Chicago, Appellee.

RALPH W. CONDEE,
FRANK R. SCHNEBERGER,
Of Counsel.

APPENDIX.

Miller Law as in Force Prior to 1935 Amendments.

"An Act to Provide for the Compulsory and Voluntary Retirement of Teachers, Principals, District Superintendents, and Assistant Superintendents, and for the Voluntary Retirement of Superintendents of Schools and Members of the Board of Examiners, and for the Payment of Retirement Annuities. (Approved May 19, 1926; title as amended by act approved June 17, 1929, L. 1929, p. 732.)

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

614a. Retirement of Teachers, Etc.) Sec. 1. In every city in this State having a population exceeding 250,000 inhabitants, the board of education of such city shall retire from active service on February 1 and August 1 of each year, all teachers, principals, district superintendents, and assistant superintendents in the public schools of such city in accordance with the following schedule:

(a) In the year 1926 all teachers, principals, district superintendents, and assistant superintendents, seventy-five or more years of age, shall be retired from active service.

(b) In the year 1927 all teachers, principals, district superintendents, and assistant superintendents seventy-four or more years of age shall be retired from active service.

(c) In the year 1928 all teachers, principals, district superintendents, and assistant superintendents seventy-three or more years of age, shall be retired from active service.

(d) In the year 1929 all teachers, principals, district superintendents, and assistant superintendents seventy-two or more years of age, shall be retired from active service.

(e) In the year 1930 and in each and every year thereafter, all teachers, principals, district superintendents, and assistant superintendents seventy or more years of age, shall be retired from active service.

614b. Annual Pension.) Sec. 2. Each person so retired from active service who served in the public schools of such city for twenty or more years prior to such retirement, shall be paid the sum of fifteen hundred dollars ($1,500.00) annually and for life from the date of such retirement from the money derived from the general tax levy for educational purposes: Provided, that any teacher, principal, district superintendent, or assistant superintendent so retired and receiving such annuity shall be subject to the call of the superintendent of schools in such city for consultation and advisory service. And, provided further, that nothing in this Act contained shall in any way impair or prejudice any rights of a teacher, principal, district superintendent, or assistant superintendent so retired to annuity under other statutory provisions concerning any teachers' pension fund, or teachers' pension and retirement fund, established in accordance with the provisions of any statute of this State; and shall not repeal or modify any other such statutory provisions.

614c. Voluntary Retirement—Annuity.) Sec. 3. Any superintendent of schools or member of the board of examiners and all teachers, principals, district superintendents, and assistant superintendents, now or hereafter serving in any of the aforesaid capacities in the public schools of

such city, and whose services in any one or more of any educational positions in the public schools of such city within the last twenty (20) years prior to retirement under this Act, shall aggregate, when taken together, fifteen (15) years or more, and who have served in the public schools of the United States for twenty-five years or more, and who are sixty-five (65) or more years of age, and who have not reached the age of compulsory retirement, as provided in sections one and two of this Act, shall upon their own request, be retired from active service and thereafter be paid annuities for life from the moneys derived from the general tax levy for educational purposes; provided that no superintendent of schools or member of said board of examiners shall be subject to compulsory retirement under the provisions of this Act, during his or her term of office.

Such annuities shall be paid respectively according to the following table of ages and annuities annually:

Age 65.....Ten hundred dollars.....($1,000)
Age 66.....Eleven hundred dollars.....($1,100)
Age 67.....Twelve hundred dollars.....($1,200)
Age 68.....Thirteen hundred dollars .....($1,300)
Age 69.....Fourteen hundred dollars.....($1,400)

And provided that the age of sixty-five (65) and at any year of age thereafter, the board of education of such city may require a physical or a mental examination of any such teacher, principal, district superintendent, or assistant superintendent upon the request of the superintendent of schools of such city and if any such teacher, principal, district superintendent, or assistant superintendent be found incapacitated for service after trial as already or hereafter provided by law he shall be retired at the annuity above provided for that age of voluntary retirement.

And provided further, that all such superintendents of schools, members of the board of examiners, teachers, principals, district superintendents, and assistant superintendents shall be subject to the same conditions as to advisory service as provided for in Section 2 of this Act. Nothing contained in this Act shall in any way impair or prejudice the right of any superintendent of schools, member of the board of examiners, teacher, principal, district superintendent, or assistant superintendent so retired to annuity under other statutory provisions concerning any teachers pension fund or teachers' pension and retirement fund established in accordance with the provisions of any statute of this State, and the payment to be made under this section, or the Act which it amends, shall be in addition to any such annuity.

(As amended by Act approved June 17, 1929. L. 1929, p. 732.)

Section added: L. 1927, p. 792.

(Smith-Hurd Ill. R. S. 1933, Ch. 122, Par. 614a (Sec. 1), 614b (Sec. 2) and 614c (Sec. 3).)

Miller Act of 1935.

(Act Complained of.)

"An Act to Provide for the Compulsory Retirement of Teachers, Principals, District Superintendents, and Assistant Superintendents, and for the Payment of Retirement Annuities.

"*Be it enacted by the People of the State of Illinois, represented in the General Assembly:*

"614a. Retirement of Teachers, etc.) Sec. 1. In every city in this State having a population exceeding 250,000

inhabitants, the board of education of such city, as soon as practical after this law becomes effective, shall retire all teachers, principals, district superintendents and assistant superintendents in the public schools in such city, who are sixty-five or more years of age, and thereafter shall retire all teachers, principals, district superintendents and assistant superintendents in the public schools of such city, on attaining the age of sixty-five years.

"614b. Annual Pension.) Sec. 2. Each person so retired from service shall be paid the sum of Five Hundred Dollars ($500.00) annually and for life from the date of such retirement from the money derived from the general tax levy for educational purposes: Provided, that any teacher, principal, district superintendent, or assistant superintendent so retired and receiving such annuity shall be subject to the call of the superintendent of schools in such city for consultation and advisory service: And, provided further, that nothing in this Act contained shall in any way impair or prejudice any rights of a teacher, principal, district superintendent, or assistant superintendent so retired to annuity under other statutory provisions concerning any teachers' pension fund, or teachers' pension and retirement fund, established in accordance with the provisions of any statute of this State.

"614c. Sec. 3. Repealed."

BLANK

PAGE

BLANK

PAGE

FILE COPY

Office - Supreme Court, U. S.
FILED
OCT 5 1937
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1937.

No. 5

CHESTER C. DODGE, CATHERINE L. BAIRD, AZILE B. REYNOLDS, ET AL.,

Appellants.

vs.

BOARD OF EDUCATION OF THE CITY OF CHICAGO, ET AL.,

Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

BRIEF FOR APPELLEES ON RE-ARGUMENT.

RICHARD S. FOLSOM,
FRANK S. RIGHEIMER,
Attorneys for Board of Education of City of Chicago:
BARNET HODES,
Corporation Counsel of City of Chicago.
Attorneys for Appellees.

RALPH W. CONDEE,
FRANK R. SCHNEBERGER,
Of Counsel.

CHAMPLIN-SHEALY COMPANY, CHICAGO

BLANK

PAGE

INDEX.

PAGE

Opinion below 1, 92

Statutes involved 1, 87, 90

Question presented 2

Statement 2-9

Appellees' motion to dismiss or affirm 9

Summary of argument 10-19

Argument 20-85

I. Pensions payable solely out of public funds are gratuities. The grant of them creates no vested rights 21-50

II. The Miller Law is an offer of a bounty and not an offer to contract 51-64

III. There is no consideration moving from appellants 64-68

IV. If the Miller Act is to be construed as a legislative contract, this court should interpret the terms of that contract in the light of decisions of the Supreme Court of Illinois made prior to the formation of the contract 68-77

V. The Miller Law of 1935 was passed pursuant to the sovereign powers of the State of Illinois. It is a local governmental law and as such should be sustained by this court 78-82

VI. Where the statute is claimed to create a contractual right, this court will give weight to the construction of a statute by the courts of the state, unless such construction is palpably erroneous 82-85

Conclusion 85

Appendix 87-108

TABLE OF CASES CITED.

Anderson v. Township of Santa Anna, 116 U. S. 356, 29 L. ed. 633 ..... 17, 18, 70, 76
Barbier v. Connolly, 113 U. S. 27, 28 L. ed. 923 ..... 19, 80
Beutel v. Foreman, 288 Ill. 106 ..... 10, 11, 17, 26, 32, 34, 69
Board of Education of the City of Chicago v. Upham, 357 Ill. 263 6
Bowler v. Nagel, 228 Mich. 434, 200 N. W. 258 ..... 13, 44
Butler v. Pennsylvania, 10 How. 402, 13 L. ed. 472 ..... 15, 62, 63
Casserly v. City of Oakland, 6 Cal. (2d) 64, 56 P. (2d) 237 ..... 12, 41, 49
Christ Church v. County of Philadelphia, 65 U. S. 300, 16 L. ed. 602 ..... 14, 51, 52
City of Dallas v. Trammell, 101 S. W. (2d) 1009 ..... 12, 45
Cobbs v. Home Insurance Co., 18 Ala. App. 206, 91 So. 627 13
Coombes v. Getz, 285 U. S. 434, 76 L. ed. 866 ..... 19, 85
Cumming v. Richmond County Board of Education, 175 U. S. 528, 44 L. ed. 262 ..... 18, 78
Crenshaw v. U. S., 134 U. S. 99, 33 L. ed. 825 ..... 15, 62
DeWolf v. Bowley, 355 Ill. 530 ..... 11, 13, 32, 33
Dismuke v. United States, 297 U. S. 167, 80 L. ed. 561 ..... 12, 25
Dodge v. Board of Education, 364 Ill. 547 ..... 1, 11, 17, 25, 26, 34, 75, 82, 84, Ap. 92
Douglas v. Pike County, 101 U. S. 677, 25 L. ed. 968 ..... 17, 18, 70, 76
Eddy v. Morgan, 216 Ill. 437 ..... 10, 16, 26, 69
Ennis Waterworks v. City of Ennis, 233 U. S. 652, 58 L. ed. 1139 ..... 17, 70, 72, 74
Fellows, Atty. General v. Connolly, 193 Mich. 499, 160 N. W. 581 ..... 12, 13, 43
Freeport W. Co. v. Freeport, 180 U. S. 587, 45 L. ed. 679 ..... 19, 85
Frisbie v. United States, 157 U. S. 160, 39 L. ed. 657 .. 10, 24

Gibbs v. Relief Assn., 125 Minn. 174, 145 N. W. 1075.. 12
Gong Lum v. Rice, 275 U. S. 78, 72 L. ed. 172.....18, 78
Grand Lodge State of Louisiana v. City of New Orleans, 166 U. S. 143, 41 L. ed. 951.....14, 51, 53
Great Northern Railway Co. v. Sunburst Oil, 287 U. S. 358, 77 L. ed. 360 .....17, 76
Groves v. Board of Education—appendix.....
.....16, Ap. 102, 55, 79, 82
Head v. Jacobs, 150 Ky. 290, 150 S. W. 349.....12, 37
Holton v. Tampa, 119 Fla. 556, 159 So. 292.....12, 49
Home Bldg. & Loan Assn. v. Blaisdell, 290 U. S. 398, 78 L. ed. 413 .....19, 79, 82
Hughes v. Traeger, 264 Ill. 612 .....10, 11, 17, 32, 69
Interstate Construction Co. v. Mass., 207 U. S. 79, 52 L. ed. 111 .....19, 80
Kavanagh v. Board of Police Pension Fund Commissioners, 134 Cal. 50, 66 Pac. 36 .....13, 44
Keime v. Community High School District, 348 Ill. 228 18
Kinnare v. City of Chicago, 171 Ill. 332 .....18, 79
Lage v. City of Marshalltown, 212 Ia. 53, 235 N. W. 761 .....13, 41
Lindstrom v. Chicago, 331 Ill. 144 .....19, 79
Louisville, etc. R. Co. v. Kentucky, 161 U. S. 677, 40 L. ed. 849 .....19, 81
Lynch v. United States, 292 U. S. 571, 78 L. ed. 1434..10, 24
Macfarland v. Bieber, 32 App. Cases, D. C. 513.....11, 39
Manigault v. Springs, 199 U. S. 473, 50 L. ed. 274....19, 81
Marshall v. Donovan, 10 Bush. (Ky.) 681.....18, 78
Matter of Mahon v. Board of Education, 68 N. Y. App. Div. 154 .....13, 44
McCann v. Retirement Board, 331 Ill. 193.....11, 17, 26, 30
Mead, et al. v. Acton, 139 Mass. 341.....13, 44
Mell v. State, 130 O. St. 306 .....11, 35
Milwaukee Elec. Ry. Co. v. R. R. Com., 238 U. S. 174, 59 L. ed. 1254 .....19, 85
Mississippi v. Miller, 276 U. S. 174, 72 L. ed. 517.....15, 62

Newton v. Mahoning County Comm., 100 U. S. 548, 25 L. ed. 710 ..... 15, 62
Olcott v. Board of Supervisors, 83 U. S. 678, 21 L. ed. 382 ..... 17, 18, 70, 75, 76
Passaic Nat. Bank & Tr. Co. v. Eelman, 116 N. J. Law 279, 183 A. 677 ..... 12, 37
Pecoy v. Chicago, 265 Ill. 78 ..... 10, 17, 26, 69
Pennie v. Reis, 132 U. S. 464, 33 L. ed. 426 ..... 23, 36, 48
People v. Abbott, 274 Ill. 380 ..... 11, 32
People v. Hanson, 330 Ill. 79 ..... 11, 17, 26, 29, 34, 69
People v. Retirement Board, 326 Ill. 579 .11, 17, 26, 30, 34, 69
Phelps v. Board of Education, 81 L. ed. 388 ..... 15, 16, 19, 55, 62, 63, 83, 84, 85
Porter v. Loehr, 332 Ill. 353 ..... 11, 32, 33
Raines v. Board of Trustees' Pen. Fund, 365 Ill. 610 ..... 11, 17, 33, 34
Renz v. Hibbings Firemen's Relief Assn., 186 Minn. 370, 243 N. W. 713 ..... 12, 13, 43
Retirement Board v. McGovern, 316 Pa. 161, 174 A. 400 ..... 12, 42
Roddy v. Valentine, 268 N. Y. 228, 197 N. E. 260 ..... 12, 44
Rudolph v. United States, 36 App. Cases, D. C. 380 .. 11, 40
Ryan v. Foreman, 262 Ill. 175 ..... 10, 16, 26, 69
Salt Mfg. Co. v. East Saginaw, 80 U. S. 373, 20 L. ed. 611 ..... 14, 51, 55
Seton Hall College v. South Orange, 242 U. S. 100, 61 L. ed. 170 ..... 19, 85
Stanislaus County v. San Joaquin & K's R. & I. Co., 192 U. S. 200, 48 L. ed. 406 ..... 14, 51, 60
State ex rel. Gorczyca v. City of Minn., 174 Minn. 594 13
State ex rel. Stafford v. State Capitol A. & I. Board, 219 Wis. 31 ..... 11, 13, 42
State ex rel. Zupnik, 131 Ohio St. 94 36
State v. Love, 89 Neb. 149, 131 N. W. 196 13
Stiles v. Board of Trustees, 281 Ill. 636 ..... 10, 16, 26, 69
Tampa W. Works v. City of Tampa, 199 U. S. 241, 50 L. ed. 170 ..... 19, 85

Trotzier v. McElroy, 182 Ga. 719, 186 S. E. 817.....12, 44
United States v. Hall, 98 U. S. 343, 25 L. ed. 180.....10, 23
United States v. Teller, 107 U. S. 64, 27 L. ed. 352....10, 23
Walton v. Cotton, 60 U. S. 355, 15 L. ed. 658.....10, 23
Welch v. Cook, 97 U. S. 541, 24 L. ed. 1112.....14, 51, 53
Wisconsin & Michigan Railway Co. v. Powers, 191 U. S. 379, 48 L. ed. 229 .....14, 51, 57

CONSTITUTION CITED.

Constitution of Illinois pertaining to schools, Article VIII, Sec. I, Ill. R. S. 1937, p. 53 .....18, 79
Illinois constitutional provision prohibiting payments for past services, Article IV, Sec. XIX, Ill. R. S. 1937, p. 45 11

TABLE OF STATUTES CITED.

Miller Law as in force prior to July, 1935..21, 31, 64, Ap. 87
Smith-Hurd Ill. R. S. 1933, Chap. 122, Pars. 614a, 614b, 614c, p. 2725 .....2, 3, 4, 9
Cahill's Ill. R. S. 1933, Chap. 122, Pars. 269 (1), 269 (2), 269 (3), p. 2543, Appendix, p. 87.....2, 3, 4, 9
Miller Act of 1935 effective July 12, 1935...Appendix 90
Ill. R. S. 1937, Chap. 122, Pars. 614a, 614b, 614c, p. 2996, Appendix, p. 90.....1, 4, 5, 8

Sections of the School Law providing for the creation and maintenance of the Public School Teachers' Pension Retirement Fund in force prior to 1935.

Smith-Hurd Ill. R. S. 1933, Chap. 122, Pars. 175-190, pp. 2646-2650 .....3, 10
Cahill's Ill. R. S. 1933, Chap. 122, Pars. 176-191, pp. 2528-2533 2

Sections of the School Law providing for the creation and maintenance of the Public School Teachers' Pension and Retirement Fund in force July, 1935.

Ill. R. S. 1937, Chap. 122, Pars. 175-190, pp. 2902-2906.2, 10

Sections of the School Law authorizing a tax levy for Public School Teachers' Pension and Retirement Fund, as in force prior to July, 1935.

Smith-Hurd Ill. R. S. 1933, Chap. 122, Par. 212d, p. 2657 3

Cahill's Ill. R. S. 1933, Chap. 122, Par. 313 (4), p. 2553

Sections of the School Law authorizing a tax levy for Public School Teachers' Pension and Retirement Fund, as in force July 12, 1935.

Ill. R. S. 1937, Chap. 122, Par. 212d, p. 2915..... 3

Sections of the School Law directing appropriations for unpaid obligations of prior years.

Ill. R. S. 1937, Chap. 122, Par. 158a, p. 2898..... 6

Sections of School Law pertaining to removal of teachers.

Ill. R. S. 1937, Chap. 122, Par. 186, p. 2905.....16, 65

Tax Levy for Educational Purposes.

Ill. R. S. 1937, Chap. 122, Par. 212a, Sec. 189 1/8, p. 2913 ..... 3, 4

APPENDIX.

Miller Law in force prior to July, 1935..... 87

Miller Law of 1935 90

Opinion of the Illinois Supreme Court in Dodge v. Board of Education (364 Ill. 547)..... 92

Opinion of the Illinois Supreme Court in Groves v. Board of Education (not yet published)..... 102

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1937.

No. 5

CHESTER C. DODGE, CATHERINE L. BAIRD, AZILE B. REYNOLDS, ET AL.,

Appellants.

vs.

BOARD OF EDUCATION OF THE CITY OF CHICAGO, ET AL.,

Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

BRIEF FOR APPELLEES ON RE-ARGUMENT.

Opinion Below.

The opinion of the Illinois Supreme Court is officially reported in *Dodge* v. *Board of Education*, 364 Ill. 547 (R. 265).

Statutes Involved.

The statutes involved are set forth in the appendix.

Miller Law as in force prior to the Act of July, 1935.

Miller Law of 1935.

Question Presented.

The sole question in this case, other than that of jurisdiction, is, did the act of the legislature of the State of Illinois, commonly called the Miller Law of 1926 as amended in 1927 grant to Chicago teachers vested property rights in future installments of the pensions created by that law, which could not be reduced by a subsequent act of the legislature without impairing the obligation of a contract?

STATEMENT.

A consideration of the history of the pension laws of Illinois pertaining to Chicago school teachers we believe will assist in understanding the questions involved.

Chicago's retired school teachers continuously since 1926 have been the recipients of two pensions, each separate and distinct from the other—one, under the regular Teachers' Pension and Retirement Fund Act; the other, under the so-called Miller Law. No other school system or public body so far as we have been able to discover has a system of double pensions.

The General Assembly of Illinois in 1895 made provision for pensions for school teachers of the Chicago public school system, who voluntarily retire. This fund, which is not involved in this suit, was originally maintained solely by voluntary contributions from teachers. That law has been amended many times. It is now a part of the School Act and appears in Par. 175 (Sec. 152) to Par. 190 (Sec. 165) of Chap. 122, Ill. R. S. 1937. It is commonly known as the "Public School Teachers' Pension

and Retirement Fund Act," deriving its name from the fact that the fund created by the statute is called in the statute "the Public School Teachers' Pension and Retirement Fund." The fund is now maintained by a tax levied for that purpose under the authority of Par. 212d (Sec. 189½), Chap. 122, Ill. R. S. 1937, from appropriation required to be made by the School Board from moneys derived from taxes levied for educational purposes (Par. 190, Sec. 165, Ill. R. S. 1937), and from deductions from teachers' salaries made pursuant to Par. 178 (Sec. 155), Chap. 122, *id.*, of the School Law. The teachers' pension fund is administered by a board of trustees and all pensions payable under the Act are payable solely out of this fund.

The statute pertaining to this pension was amended in 1935 to increase the tax rate authorized to be levied pursuant to Par. 212d, Chap. 122, *id.*, and at the same time increased the amount of the pensions to be received under it by the teachers upon retirement to amounts ranging from $800.00 to $1,200.00 per annum, depending upon length of service. The retired teachers are continuing to receive their pensions under this Act, the validity of which is not challenged by appellants.

The General Assembly of Illinois, in 1925, passed a second pension law for teachers, commonly known as the "Miller Law." This Act was not presented to the Governor of Illinois for approval until May 19, 1926, and therefore did not become a law until that date. It is set forth on page 49 of the Transcript of Record filed herein. This Act provided for compulsory retirement of teachers aged 75 or over in 1926, aged 74 in 1927, aged 73 in 1928, aged 72 in 1929, and aged 70 or over in 1930, and provided for annual pensions of $1,500.00 to each teacher so retired.

This grant was in addition to the pension received by such retired teachers from the regular Teachers' Pension Fund above referred to. The Miller Law expressly provided that nothing in the Act contained should in any way impair or prejudice any right of a teacher to the pension under the Teachers' Pension and Retirement Fund Act (R., 50).

In 1927 the Miller Law was amended by adding Section 3, which provided for pensions on a sliding scale ranging from $1,000.00 to $1,500.00 per year to teachers voluntarily retiring between the ages of 65 and 70 (R., 62-63).

This section was repealed by the Act of 1935.

The Miller Law as originally adopted or as subsequently amended neither established nor made provision for the establishment of a fund out of which such pensions are payable. The law does not authorize or provide for deductions from teachers' salaries of any money to be used towards the payment of such pensions and teachers contribute nothing towards these pensions. These pensions are, by the Act, expressly made payable solely from moneys derived from the general tax levy for educational purposes—the tax provided by law for the payment of salaries of teachers and others actively engaged in operating the schools of Chicago. The educational taxes are levied annually pursuant to Section 189⅛ of the School Law, Par. 212-a, Ill. R. S. 1937.

These pension provisions of the Miller Law are all found in Sections 2 and 3 of the Act. Section 1 of the Act pertains solely to retirement.

The Miller Law having become effective May 19, 1926 (R., 49), the Superintendent of Schools, pursuant to its provisions, on July 28, 1926, reported the names of a total

of twenty persons who on August 1, 1926, would be required to be retired pursuant to the Act and be paid the sum of $1,500.00 annually (R., 12-13). This required an expenditure of $12,000.00 during the year 1926 by the Board of Education out of educational taxes. On January 12, 1927, fourteen additional persons were retired (R., 74).

These retirements increased annually and the amounts required to be paid to teachers retired pursuant to this Miller Law had increased to such an extent that the Board was required to and did appropriate for this expense in its annual school budget for the year 1935 the sum of $1,125,000.00 (R., 115, 132).

Under Section 2 of the Miller Law (Par. 614b, Chap. 122, Ill. R. S. 1937) set forth in the appendix, this $1,125,000.00 was required to be paid out of the taxes levied for educational purposes for the year 1935, which taxes were limited by statute to $43,000,000.00 (Par. 212a, Chap. 122, Ill. R. S. 1937).

An attempt has been made by the appellants in their reply brief heretofore filed herein and in their oral argument to show that the constantly growing annual expenditure for Miller Law pensions (the appropriation for which in 1935 amounted to $1,125,000.00) was small in proportion to the total amount appropriated ($187,270,890.97) for educational purposes in 1935. They fail, however, to point out that over $138,000,000.00 of this amount was appropriated for the purpose of paying unpaid obligations of prior years. These unpaid obligations consisted of unpaid tax warrants for the years 1929, 1930, 1931, 1932, 1933 and 1934, with accrued interest thereon payable out of taxes levied for such years when collected, and other unpaid obligations of prior years properly chargeable to the educational fund. The Board is required by statute

(Par. 158a, Chap. 122, Ill. R. S. 1937) to appropriate each year, not only for current expenses but also for all unpaid obligations of prior years. For this reason, in the year 1935 over $138,000,000.00 was added to the appropriation for the current year's educational expenditures, making an aggregate appropriation in 1935 of $187,270,890.97.

The financial depression that we have been passing through seriously affected the Chicago Board of Education. It owed millions of dollars to teachers for past due salaries in addition to the millions owed for past due paper and other obligations of prior years, and was without funds. The burden of all this indebtedness falls on the taxpayer since the schools are maintained almost entirely by taxes.

The state of the Board's finances was before the Supreme Court in *Board of Education* v. *Upham*, 357 Ill. 263, a case involving a bond issue of the Board of Education, the proceeds of which were to be used for the payment of unpaid and past due teachers' salaries. The bonds were secured by a mortgage on the Board's real estate pursuant to a statute whose validity was challenged. The court in its opinion made the following finding of facts as to the financial condition of the appellee Board in 1934, on page 265:

> "The following facts are necessary to an understanding of the questions involved: The revenues of the board of education have been greatly diminished since 1928 on account of the non-payment and delay in the collection of taxes as well as the lowering of assessments of property values. As a result, the board has been unable to pay in full the salaries of its school teachers and other necessary expenses. Unpaid salaries of teachers and other employees amount to $25,600,000. For the current year 1934 the board has obligations for teachers' salaries and education

expenses in the sum of $25,000,000. There are past due claims amounting to $3,800,000, making a total of $54,400,000. There is no money in the treasury with which to meet these obligations. In 1930 the General Assembly, recognizing the credit impairment of certain municipalities and the necessity for raising cash to pay current liabilities, enacted a law which provided for the creation of a revolving fund out of the proceeds of the sale of bonds in the sum of $25,000,000. The board of education of Chicago availed itself of that law. In the long duration of the depression the fund so created became exhausted, and in 1933 the legislature added section 134-3/4 to the School Act. (Cahill's Stat. 1933, Chap. 122, Par. 158 [2]).

"This added section provides that in all cases where the board of education in cities having a population exceeding 500,000 inhabitants shall have heretofore created a working cash fund pursuant to section 134½ of the act, it may incur an indebtedness for the purpose of increasing such fund and issue bonds therefor in an amount not to exceed $40,000,000. Under conditions and limitations specifically set forth, the proceeds from the sale of the bonds are to be placed in that fund and are not subject to appropriation or budget expense. The board may, however, by resolution direct the transfer of money from that fund to the educational purposes fund. Provision is made for the restoration of the working cash fund from taxes and other revenues, when collected."

The proceeds of the bond issue in that case paid part of the past due teachers' salaries but the financing of current obligations such as teachers' payrolls and other educational expenses including Miller Law pensions presented a problem to the Board of balancing a budget on reduced revenue and required drastic economies.

Since the teachers' payrolls constituted the major part of the educational expenses, the Board proceeded first to reduce teachers' salaries. As disclosed by the answer of the appellees and the replication filed thereto the maximum

annual salary of an elementary teacher prior to the adoption of the amendment complained of was reduced as a result of the Board's economy measures to $1,912.50, and the salary of an elementary teacher in the lower group was reduced to $1,127.50 (R., 115, 152-153).

While the active teachers' salaries were reduced 23½% (R., 121) neither the pension paid from the regular Teachers' Pension and Retirement Fund nor the additional pension paid by the Board under the Miller Law out of taxes levied for maintaining the schools were reduced. The result was that the majority of the retired teachers received from both pensions a sum aggregating $2,500.00 per annum, or $587.50 more than the maximum salary received by elementary school teachers and $1,372.50 more than the salary received by teachers in the lower group for conducting classrooms daily (R., 115).

The legislature, in 1935, reduced the pension to be paid to retired teachers under the Miller Law to $500.00 per annum, in order to effect a substantial annual saving in the Board's expenditures and at the same time to correct the then existing unjust condition of payments to each retired teacher in excess of the maximum salary of the active elementary teacher. The effect of the amendment was that the total to be paid from the two pensions to the retired teachers in future installments annually in the great majority of cases was $1,500.00 per annum. In some few cases it would amount to $1,300.00, and in others to $1,700.00 per annum, depending on the date of retirement and length of service.

All pension installments due under the old Miller Law were paid before the Miller Law of 1935 became effective.

Appellants are teachers and a few principals who were retired or who sought to be retired pursuant to this Act

as originally adopted and as amended. As pointed out by appellants' brief, they fall into three classes: (a) one hundred sixty-two who were compulsorily retired at seventy years of age or over, pursuant to Section 1 of the Act (R., 2, 92, 165); (b) six hundred fifty who retired pursuant to Section 3 of the Act as amended in 1927 (R., 93, 95-100, 165, 166); and (c) one hundred thirty-two who made application for retirement pursuant to Section 3 of the Act during May and June immediately preceding the date the repeal of Section 3 of the Act became effective but whose applications were not acted upon by the Board until the Board compulsorily retired them pursuant to the Act complained of herein (R., 100-105, 167-169).

Appellants herein brought their suit in the Superior Court of Cook County, Illinois, for injunction. The decision of the Superior Court denying the injunction and dismissing the bill was affirmed by the Supreme Court of Illinois.

Appellees' Motion to Dismiss or Affirm.

The appellees, Board of Education of the City of Chicago, *et al.*, have filed a statement in this cause opposing jurisdiction and moving to dismiss, and in the alternative to affirm. An order was entered herein providing that further consideration of the motion to dismiss or affirm be postponed to the hearing of the case on the merits.

SUMMARY OF ARGUMENT.

I.

Pensions payable solely out of public funds are gratuities. The grant of them creates no vested right.

A. The Miller Law pensions are of this kind. They are payable solely out of general taxes levied for educational purposes. Teachers contribute nothing, either by voluntary payment or by way of salary deductions.

Smith-Hurd Ill. R. S. 1933, Chap. 122, Pars. 614 (a), 614 (b), 614 (c).

Ill. R. S. 1937, Chap. 122, Pars. 614 (a), 614 (b).

B. This court has held that pensions similar to the Miller Law pensions are gratuities that may be withdrawn at any time at the discretion of Congress.

Walton v. *Cotton*, 60 U. S. 355, 15 L. ed. 658.

U. S. v. *Hall*, 98 U. S. 343, 25 L. ed. 180.

U. S. v. *Teller*, 107 U. S. 64, 27 L. ed. 352.

Frisbie v. *U. S.*, 157 U. S. 160, 39 L. ed. 657.

Lynch v. *U. S.*, 292 U. S. 571, 78 L. ed. 1434.

C. The Supreme Court of Illinois has without exception held that pensions are not contractual; that they are mere expectancies based upon an anticipated continuance of existing law.

Eddy v. *Morgan*, 216 Ill. 437.

Ryan v. *Foreman*, 262 Ill. 175.

Hughes v. *Traeger*, 264 Ill. 612.

Pecoy v. *Chicago*, 265 Ill. 78.

Stiles v. *Board of Trustees*, 281 Ill. 636.

Beutel v. *Foreman*, 288 Ill. 106.

People v. *Retirement Board,* 326 Ill. 579.
People v. *Hanson,* 330 Ill. 79.
McCann v. *Retirement Board,* 331 Ill. 193.
Dodge v. *Board of Education,* 364 Ill. 547.
Raines v. *Board of Trustees' Pen. Fund,* 365 Ill. 610.

The following decisions cited by appellants as supporting the proposition that pensions are vested rights do not so hold.

Hughes v. *Traeger,* 264 Ill. 612..
People v. *Abbott,* 274 Ill. 380.

This was pointed out by Justice Carter in *Beutel* v. *Foreman,* 288 Ill. 106, who also wrote the opinion in *People* v. *Abbott,* 274 Ill. 380.

The following Illinois decisions cited by appellants as supporting their contention of vested rights in a pension are not applicable: *DeWolf* v. *Bowley,* 355 Ill. 530, as it involves no question of vested rights or power of the legislature to alter pension acts; *Porter* v. *Loehr,* 332 Ill. 353, which merely holds that a pension cannot be increased after retirement because it is extra compensation and therefore violates Section 19, Article 4 of the State Constitution.

D. Courts of other jurisdictions are all in accord and hold that there are no vested rights in future installments of pensions payable solely from public funds and to which no contributions are made. They differ only in what constitutes a contribution.

Mell v. *State,* 130 O. St. 306.
State ex rel. Zupnik, 131 O. St. 94.
Macfarland v. *Bieder,* 32 App. Cases D. C. 513.
Rudolph v. *U. S.,* 36 App. Cases D. C. 380.

Head v. *Jacobs*, 150 Ky. 290, 150 S. W. 349.
Passaic National Bank & Trust Co. v. *Eelman*, 116 N. J. Law, 279, 183 A. 677.
Gibbs v. *Relief Ass'n*, 125 Minn. 174, 145 N. W. 1075.

Even in jurisdictions where it is held that pensions are based on contracts, such pensions are subject to the inherent right of the legislature to modify.

City of Dallas v. *Trammell*, 101 S. W. (2d) 1009.
Casserly v. *City of Oakland*, 56 P. (2d) 237, 6 Cal. (2d) 64.
State ex rel. Holton v. *Tampa*, 119 Fla. 556, 159 So. 292.

E. Decisions of the several states relied on by appellants involve situations that are not comparable to that of the appellants and have no application to pensions such as are provided for under the Miller Law, for the following reasons:

(1) The statute under which pensioners claimed a right provided for contributions to a retirement fund created for that purpose.

Roddy v. *Valentine*, 268 N. Y. 228, 197 N. E. 260.
Dismuke v. U. S., 297 U. S. 167, 80 L. ed. 561.
Trotzier v. *McElroy*, 182 Ga. 719, 186 S. E. 817.
Retirement Board v. *McGovern*, 316 Pa. 161, 174 Atl. 400.
Renz v. *Hibbing Firemen's Relief Ass'n*, 186 Minn. 370, 243 N. W. 713.
Fellows Atty General v. *Connelly*, 193 Mich. 499, 160 N. W. 581.

(2) The court merely decided that the legislature by statute had the authority to provide for a pension scheme

for persons in service and no question of any subsequent act of the legislature was involved.

Bowler v. *Nagel,* 228 Mich. 434, 200 N. W. 258.

Matter of Mahon v. *Board of Education,* 68 N. Y. App. Div. 154.

DeWolf v. *Bowley,* 355 Ill. 530.

Fellows, Attorney General v. *Connolly,* 193 Mich. 499, 160 N. W. 581.

Mead v. *Acton,* 139 Mass. 341.

State ex rel. Gorczyca v. *City of Minn.,* 174 Minn. 594.

State ex rel. Stafford v. *State Annuity Board,* 219 Wis. 31.

State v. *Love,* 89 Neb. 149, 131 N. W. 196.

Cobbs v. *Home Ins. Co.,* 18 Ala. App. 206, 91 So. 627.

(3) The particular lump sum payment of pension had accrued and was past due.

Kavanagh v. *Police Commissioners,* 134 Cal. 50, 66 Pac. 36.

(4) The act under which the pensioner claimed a right to a pension was still in force and had not been changed by subsequent acts of the legislature.

Lage v. *City of Marshalltown,* 212 Ia. 53, 235 N. W. 761.

Renz v. *Hibbing Firemen's Relief Ass'n,* 186 Minn. 370, 243 N. W. 713.

II.

The Miller Law is an offer of a bounty and not an offer to contract.

A. This court has held that a State legislature may make an offer of bounty as distinguished from an offer to contract and although a detriment is suffered by a person or class of persons as a result of the offer of bounty, such person or class of persons acquires no rights which may not be modified by the legislature.

Christ Church v. *County of Philadelphia,* 65 U. S. 300, 16 L. ed. 602.

Welch v. *Cook,* 97 U. S. 541, 24 L. ed. 1112.

Grand Lodge of the State of Louisiana v. *City of New Orleans,* 166 U. S. 143, 41 L. ed. 951.

Salt Manufacturing Co. of East Saginaw v. *East Saginaw,* 80 U. S. 373, 20 L. ed. 611.

Wisconsin & Michigan Railway Co. v. *Powers,* 191 U. S. 379, 48 L. ed. 229.

Stanislaus County v. *San Joaquin, etc. Co.,* 192 U. S. 200, 48 L. ed. 406.

The Miller Law was passed in aid of a beneficent purpose. There was no necessity for the State to induce the teachers to retire at any certain age. It might at any time have passed a law providing that they should be compulsorily retired at a given age.

Anyone accepting the pension under the Miller Act did so without compulsion. He had the right to continue to teach or to retire with the additional pension. Likewise there was no compulsion on the part of the legislature to continue the Act in force.

The Miller Law differs from a law offering a special charter. There was no expression of an intention on the part of the legislature to make a contract rather than a law. It was a mere declaration of legislative policy and did not constitute an offer to irrevocably pay pensions of a certain amount.

Even though a law may be framed to give an expression of perpetuity, the courts will not construe perpetuity to be synonymous with irrevocability.

B. It has been uniformly held that public officers and employes acquire no vested rights to the incidents of their positions.

Butler v. *Pennsylvania,* 10 How. 402, 13 L. ed. 472.

Newton v. *Mahoning County Commissioners,* 100 U. S. 548, 25 L. ed. 710.

Crenshaw v. *United States,* 134 U. S. 99, 33 L. ed. 825.

Mississippi v. *Miller,* 276 U. S. 174, 72 L. ed. 517.

Phelps v. *Board of Education,* 81 L. ed. 388.

Private vested rights of property are clearly distinguishable from measures adopted by a body politic for the benefit of all and according to universal understanding, may be varied or discontinued as the public good shall require. So regulations of tenure of office and salaries are functions which governments are called upon to foster and promote for the general good and cannot be presumed to have surrendered. The same is true of pensions granted to public officers or employes.

III.

There is no consideration moving from appellants.

A. it was not necessary for the legislature to pass the Miller Law to induce satisfactory service of teachers, as the law already provided for their removal for unsatisfactory service.

Par. 186, Chap. 122, Ill. R. S. 1937.

B. There was no need to give a pension to induce retirement at the age of sixty-five or over, as the legislature had the power to compulsorily retire such teachers.

Groves v. *Board of Education* (Appendix, p. 102).
Phelps v. *Board of Education,* 81 L. ed. 388.

C. The Miller Law was an inducement to remain in the service rather than one to retire since the longer the teachers stayed in the service the higher the pension paid to him on retirement under Section 3 of the Miller Law.

D. Retirement pursuant to the provisions of the Miller Act resulted in no financial benefit to the Board.

IV.

If the Miller Act is to be construed as a legislative contract, this court should interpret the terms of that contract in the light of decisions of the Supreme Court of Illinois made prior to the formation of the contract.

A. The legislature knew the Supreme Court had always held that pensions were mere gratuities and subject to its control at all times.

Eddy v. *Morgan,* 216 Ill. 437 (1905).
Ryan v. *Foreman,* 262 Ill. 175 (1914).
Stiles v. *Board of Trustees,* 281 Ill. 636 (1917).

People v. *Retirement Board,* 326 Ill. 579 (1927).
Hughes v. *Treager,* 264 Ill. 612 (1914).
Pecoy v. *City of Chicago,* 265 Ill. 78 (1914).
Beutel v. *Foreman,* 288 Ill. 106 (1919).
People v. *Hanson,* 330 Ill. 79 (1928).

B. The Supreme Court has adhered to this interpretation since the passage of the Miller Act.

People v. *Retirement Board, supra.*
People v. *Hanson, supra.*
McCann v. *Retirement Board,* 331 Ill. 193
Dodge v. *Board of Education,* 364 Ill. 547.
Raines v. *Board of Trustees Pension Fund,* 365 Ill. 610.

C. Appellants knew or are presumed to have known the law of the State as defined in these decisions.

D. Such construction by the courts became an integral part of any contract claimed to have resulted from the Miller Act.

E. This court will interpret the terms of a contract created by legislative enactment in the light of the decisions of the Supreme Court of the State.

Anderson v. *Township of Santa Anna,* 116 U. S. 356, 29 L. ed. 633.
Ennis Waterworks v. *City of Ennis,* 58 L. ed. 1139, 233 U. S. 652.
Olcott v. *Board of Supervisors,* 83 U. S. 678, 21 L. ed. 382.
Douglas v. *Pike County,* 101 U. S. 677, 25 L. ed. 968.
Great Northern Railway Co. v. *Sunburst Oil and Refining Co.,* 287 U. S. 358, 77 L. ed. 360.

F. Weight will be given to decisions of the Supreme Court of the State, rendered prior to the enactment of the statute being interpreted by this court.

Anderson v. *Township of Santa Anna, supra.*
Olcott v. *Board of Supervisors, supra.*
Douglas v. *Pike County, supra.*

G. The decisions of the Supreme Court of Illinois on the subject of pensions rendered prior to the enactment of the Miller Law should be construed as reserving to the State the right to modify that law.

V.

The Miller Law of 1935 was passed pursuant to the sovereign power of the State of Illinois. It is a local governmental law and as such should be sustained by this court.

A. The establishment, maintenance and operation of a system of free schools is a sovereign power of the State.

Gong Lum v. *Rice,* 275 U. S. 78, 72 L. ed. 172.
Cumming v. *Richmond County Board of Education,* 175 U. S. 528, 44 L. ed. 262.
Marshall v. *Donovan,* 10 Bush. (Ky.) 681.

B. This court will interfere with the exercise of such power only with the greatest reluctance.

Cumming v. *Richmond County Board of Education, supra.*

C. In Illinois the General Assembly has full authority to enact such laws as it may deem necessary and expedient for the proper administration and regulation of public schools in the promotion of their efficiency.

Illinois Constitution, Art. VIII, Sec. 1.
Keime v. *Community High School District,* 348 Ill. 228.
Kinnare v. *City of Chicago,* 171 Ill. 332.

Lindstrom v. *City of Chicago*, 331 Ill. 144.
Groves v. *Board of Education* (Appendix, p. 102).

D. In the exercise of such sovereign power, the acts of the State may modify existing contractual rights.

Home Bldg. & Loan Assn. v. *Blaisdell*, 290 U. S. 398, 434, 78 L. ed. 413, 426.

E. Regulation of education has been considered as an exercise of the police power by the State.

Barbier v. *Connolly*, 113 U. S. 27, 28 L. ed. 923
Interstate Const. Co. v. *Massachusetts*, 207 U. S. 79, 52 L. ed. 111.
Louisville etc. R. Co. v. *Kentucky*, 161 U. S. 677, 40 L. ed. 849.

F. The State may exercise its police power so as to modify existing contracts.

Manigault v. *Springs*, 199 U. S. 473, 480, 50 L. ed. 274, 278.

G. The economic interests of a State justify the exercise of police power.

Home Bldg. & Loan Ass'n v. *Blaisdell, supra.*

VI.

Where a statute is claimed to create a contractual right, this court will give weight to the construction of the statute by the courts of the state, unless such construction is palpably erroneous.

Phelps v. *Board of Education of the Town of West New York*, 81 L. ed. 388.
Freeport Water Co. v. *Freeport*, 180 U. S. 587.
Tampa Water Works v. *Tampa*, 199 U. S. 241.
Milwaukee Elec. Ry. Co. v. *R. R. Com.*, 238 U. S. 174.
Seton Hall College v. *South Orange*, 242 U. S. 100
Coombes v. *Getz*, 285 U. S. 434.

ARGUMENT.

It is the contention of appellants that the Miller Act created a contractual relationship between the appellants and the Board of Education of the City of Chicago, whereby the appellants became vested with a right to receive for life $1,500.00 annually. They further contend that the Miller Act of 1935, insofar as it reduces the amount of money to be paid annually to said appellants from $1,500.00 to $500.00, is violative of Section Ten of Article One of and the Fourteenth Amendment to the Constitution of the United States.

In order to sustain the contention of appellants, it is necessary that this court find first that a contractual relationship was established between the appellants and appellees, and second that if a contractual relationship was established, that relationship vested appellants with rights which could not be divested by the State without contravening Section Ten of Article One of and the Fourteenth Amendment to the Constitution of the United States.

In order to establish a contractual relationship between appellants and appellees in the case at bar, the Miller Act must have constituted an offer to appellants and the appellants must have accepted the offer and furnished consideration for a contract.

It is the contention of appellees that no offer was ever made to the appellants to enter into a contract whereby they would, upon compliance with the terms of the Miller Act and the amendments thereto, receive $1,500.00 annually for life; that if it be held that the Miller Act constituted an offer to contract, appellants furnished no con-

sideration which would establish the contract contended for; that if this court should determine that appellants and appellees entered into a contract, the right of the legislature to decrease the pension provided for was an essential part of, and included as a provision in, that contract, and therefore that in decreasing the pensions the State did not impair any contract obligation nor divest appellants of any vested rights contrary to any provision of the Constitution of the United States; and that the Miller Act of 1935 was passed pursuant to the sovereign or reserved power of the State of Illinois and should be sustained as an exercise of that power.

We pointed out in our Statement Opposing the Jurisdiction and Motion to Dismiss or Affirm, heretofore filed herein, that the Federal question attempted to be asserted by appellants is foreclosed by previous decisions of this court, which has uniformly held that statutes providing for pensions or providing for tenure in office do not create contracts.

We further point out that since the Miller Act of 1935 was passed pursuant to the sovereign or reserved power of the State of Illinois, it is not subject to review by this court.

I.

Pensions payable solely out of public funds are gratuities. The grant of them creates no vested rights.

Section 1 of the Miller Act, effective 1926, provided for the compulsory retirement of teachers from active service, according to a schedule. It related solely to retirement and pensions are not mentioned. Its validity is not challenged.

Section 2 provides that upon such retirement each of said retired teachers should receive $1,500.00 annually from money to be derived annually from the general tax levies for educational purposes. Section 2 further provided that nothing in the Act contained should "in any way impair or prejudice any rights of a teacher, * * * so retired to annuity under other statutory provisions concerning any teachers' pension fund or teachers' pension and retirement fund, established in accordance with the provisions of any statute of this State; and shall not repeal or modify any other such statutory provisions."

When the Act was amended in 1927, Sections 1 and 2 remained as before; but a new section, Section 3, was added providing for a pension to be paid to those who voluntarily retired at ages between sixty-five and seventy years, and repeated therein the provision already found in Section 2 (reserving rights under the Teachers' Pension and Retirement Fund) providing that the payment "to be made under this section of the Act which it amends shall be in addition to any such annuity." This amendment also broadened the title of the Act. Section 3 of this Act was again amended in 1929, making minor changes not involved in this suit. Neither the compulsory retirement feature of the Act nor any other of its provisions were challenged and the Board, in accordance with the terms of this Act of 1926, as amended in 1927 and 1929, continued to make the required payments solely out of moneys collected from taxes levied annually for educational purposes.

This court has consistently held that no contract is created between the State and one who is pensioned under a benevolent purposes act, under the terms of which no fund is established and no contribution is required by the bene-

ficiary either in the form of deduction from salary or actual payment into a fund; that the grant of such a pension creates no vested right and that the legislature in its discretion may change, modify or reduce such a pension.

United States Supreme Court Decisions.

In the case of *Walton* v. *Cotton,* 60 U. S. 355, 15 L. Ed. 658, the court held that a pension of the character just described was "undoubtedly a bounty." In *United States* v. *Hall,* 98 U. S. 343, 25 L. ed. 180, the court reached the same conclusion.

Whether or not Congress could pass a law cutting off a pension that a person was receiving pursuant to a prior act was before this court in *United States* v. *Teller,* 107 U. S. 64, 27 L. ed. 352. The court held:

> "It was competent for Congress to pass this Act. No pensioner has a vested legal right to his pension. Pensions are the bounties of the Government, which Congress has the right to give, withhold, distribute or recall, at its discretion."

This principle of law strictly adhered to by this Honorable Court is also the law in Illinois and has never been departed from by the Illinois courts.

Appellants cite the case of *Pennie* v. *Reis,* 132 U. S. 464, 33 L. ed. 426, contending that the language in that case states their position in the case at bar. We respectfully submit that instead of supporting appellants' contention that there is a vested and contractual right in future installments of pensions, the case holds squarely to the contrary.

On page 471, the court said:

> "The direction of the State, that the fund should be one for the benefit of the police officer or his represen-

> tative under certain conditions, was subject to change or revocation at any time, at the will of the Legislature. *There was no contract on the part of the State that its disposition should always continue as originally provided.*" (Italics supplied.)

Another case wherein this court was called upon to determine whether a pension created a vested contractual right was *Frisbie* v. *United States,* 157 U. S. 160, 39 L. ed. 657. The court, on page 166, states:

> "The pension granted by the Government is a matter of bounty. 'No pensioner has a vested legal right to his pension. Pensions are the bounties of the Government, which Congress has the right to give, withhold, distribute, or recall, at its discretion.' *Walton* v. *Cotton,* 60 U. S. 355, 19 How. 355 (15:658); *U. S.* v. *Teller,* 207 U. S. 64, 68 (27:352, 354)."

In 1934, this court decided the case of *Lynch* v. *United States,* 292 U. S. 571, 78 L. ed. 1434, wherein it pointed out the distinction between benevolent purposes pensions, such as the one granted by the Miller Law, and annuities payable under a statute providing for war risk insurance under the terms of which the insured paid premiums provided for in a written contract or policy. Although this case was cited by appellants in their jurisdictional statement, we find that they failed to cite it in their brief in support of their claim of contractual vested rights. The reason is obvious.

On page 577, the court said:

> "* * * Pensions, compensation, allowances and privileges are gratuities. They involve no agreement of parties, and the grant of them creates no vested right. The benefits conferred by gratuities may be redistributed or withdrawn at any time in the discretion of Congress. *U. S.* v. *Teller,* 107 U. S. 64, 68 (27 L. ed. 352, 354), 2 S. Ct. 39; *Frisbie* v. *U. S.,* 157

U. S. 160, 166 (39 L. ed. 657, 659), 15 S. Ct. 586; *U. S.* v. *Cook*, 257 U. S. 523, 527 (66 L. ed. 350, 351), 42 S. Ct. 200."

Dismuke v. *United States*, 297 U. S. 167, 80 L. ed. 561, cited by appellants, involved a federal retirement act and the court held that the proviso in the Tucker Act withholding jurisdiction of suits on claims for pensions did not deprive the District Court of jurisdiction of claims under that retirement act as "the annuitant contributes to them by deductions from his salary or by actual payments into the fund" (p. 170). As we pointed out heretofore, the Miller pension grants come solely out of taxes annually levied for educational purposes and the teachers make no contribution whatever either by deductions from salaries or by actual payments into a fund.

Illinois Decisions.

The courts of Illinois following the decisions of this court, notwithstanding counsel's assertion to the contrary, have consistently held that pensions like the one involved in the case at bar are at all times subject to the control of the legislature. This was emphasized by Mr. Justice Stone, who, when rendering the unanimous opinion for the court below in the case at bar, on page 554, said:

> "The doctrine, as we have seen, is thoroughly established in this State that the State may control the giving or taking away of pensions * * *" (*Dodge* v. *Board of Education*, 364 Ill. 547).

On page 43 of appellants' brief the statement is made that until the decision in the Supreme Court of Illinois in the instant case, the Illinois law appeared to be settled that an annuity or a pension was not a gratuity but was a vested right, yet in their brief, page 47, appellants set up

a list of seven Illinois Supreme Court decisions which they concede hold that pensions are bounties springing from the graciousness of the sovereign which may be given or taken away at the discretion of the legislature. These cases are:

Eddy v. *Morgan,* 216 Ill. 437.
Ryan v. *Foreman,* 262 Ill. 175.
Pecoy v. *Chicago,* 265 Ill. 78.
Stiles v. *Board of Trustees,* 281 Ill. 636.
People v. *Retirement Board,* 326 Ill. 579.
People v. *Hanson,* 330 Ill. 79.
McCann v. *Retirement Board,* 331 Ill. 193.

Appellants' contention here is the same as it was in the court below, and is stated in the opinion of that court at page 550, as follows:

> "As is stated by counsel for appellants in their reply brief: 'Appellants' case rests upon the proposition that they have vested property rights to the payment of future installments of the annuities on the basis fixed by the law in force at the time they retired, or being entitled to retire made application for retirement.'"

The leading case on this proposition is *Beutel* v. *Foreman,* 288 Ill. 106. In this case it appears that one Beutel, on March 31, 1917, after having completed a service of twenty (20) years as a member of the police force, filed application for a pension. On July 12, 1917, his application was denied on the ground that the Police Pension Fund Act as amended on July 1, 1917, provided that no policeman should be pensioned after a service of twenty (20) years until he should have reached the age of fifty (50) years. Beutel had not reached the age of fifty (50) years on July 1, or on July 12, 1917. It was therefore contended that under the amendment to the Pension Act

effective July 1, 1917, he was not entitled to receive a pension.

It will be noted that the Pension Act in force prior to July 1, 1917, contained no fifty (50) year age requirement. In other words, the Pension Act in force on March 31, 1917 (the date of Beutel's application and the date according to appellants' theory when rights vest) did not require that the pensioner be fifty (50) years of age at the time of retirement. The amendment of July 1, 1917, did make such requirement.

It was earnestly contended in that case, as in the case at bar, that the event happened which vested his right to the pension on March 31, 1917 (petitioner having served the required period entitling him to a pension), before the law was revised; that he had made his application for retirement and hence the legislature could not take away that vested right to receive a pension by subsequent legislation without violating his vested property right protected by the Constitution. The court stated the position of the petitioner in that case as follows (page 109):

> "Counsel for defendant in error earnestly insist that the Pension act in force previous to July 1, 1917, gave him a contract and property right in his pension at the time he filed his application for the same, and therefore the amendment in question must be held to be unconstitutional because of violating a property right vested in him."

Counsel in the case at bar contend that since the teachers had completed the service, which under the old Miller Law entitled them to $1,500 pensions, they acquired fixed rights under it which could not be changed without violating the state and federal constitutions.

In the *Beutel* case, the police officer also had completed the service required under the law then in force and sev-

eral months before it was changed had filed his application for the pension provided by the Act.

In holding that no constitutional right of the claimant was violated by the legislature, the court, on page 109, said:

> "'But a right to be within its protection must be a vested right. It must be something more than a mere expectation, based upon an anticipated continuance of the existing law.'"

On page 112 the court further stated:

> "A full discussion of the question of vested rights in pension funds is found in *Gibbs* v. *Minneapolis Fire Department Relief Ass'n*, 37 Ann. Cas. 1915C, 749, (125 Minn. 174), and in the exhaustive note following the opinion. It was argued there, as here, that the right of a person claiming a pension was a vested one, and the opinion quoted from another decision with approval, as follows: 'The statute differs from a contract in that the government may withdraw the benefits conferred at any time it may deem advisable after a party enters the service, either before or after the right to a pension accrues. * * * It also follows that while there is no vested right in a pension which cannot be divested by the mere exercise of the legislative will, if relators have any rights they are vested ones so long, only, as the statute in question remains in force and unchanged, subject to be divested at any time that Congress may desire.' See also, *Stevens* v. *Minneapolis Fire Department Relief Ass'n*, 50 L. R. A. (124 Minn. 381), 1018, and note reviewing the authorities; 21 R. C. L. 242; 2 McQuillin on Mun-Corp., Sec. 511; 5 *id.*, Sec. 2422.
>
> "We can reach no other conclusion in this case than that by the great weight of authority in this and other jurisdictions, as between the State and the members of the police department of one of the municipalities in this State, the State may take the right of pension away, under such circumstances as shown by this rec-

ord, without affecting the contract right of the pensioners or violating the constitution."

The Illinois Supreme Court had occasion in *People* v. *Hanson*, 330 Ill. 79, to reiterate with approval the principles laid down in the *Beutel* case, *supra*.

In the *Hanson* case plaintiff in April, 1917, after having completed 20 years of service, made application for pension pursuant to the law in force at that time which provided for pension equivalent to one-half of officer's salary upon completion of 20 years of service. In June, 1917, the Act was amended by the legislature effective July 1, requiring applicant to be 50 years old. On July 12, 1917, the trustees denied his application as he was not 50 years old. In February, 1918, the Board placed his name on the roll from the date of his retirement until June 30, 1917. In September, 1921, the petitioner and others similarly situated entered into a compromise agreement whereby in consideration of the payment of a sum of money they released their claims to all back pensions and were reinstated on the pension roll as of August 1, 1921, and pensions were to be paid to them continuously thereafter.

The pension was paid to petitioner until June 29, 1925, when the Board struck his name off the roll and directed no further money be paid to him until he paid back all money paid him for the period prior to his attaining 50 years of age. This was done pursuant to an amendment passed in 1925, authorizing the Board to retain out of future payments any money paid to a pensioner through misrepresentation, fraud and error.

As stated by the court in its opinion (page 84), the questions of law raised were:

1. Was petitioner's right to a pension an expectancy, or did it become a vested right under the law in

force at the time of his retirement and application for a pension?

2. Was the compromise agreement of September, 1921, an accord and satisfaction?
3. Was the Act of 1921 in violation of section 13 of Article 4 of the Constitution?
4. Was the amendatory Act of 1925 constitutional?

The court, on page 89, held:

"The objection in the *Retirement Board* case to the amendment of 1925 was, that it contravened section 1 of the fourteenth amendment to the constitution of the United States, and section 2 of article 2 of the constitution of this state. The court said: 'This contention cannot be sustained. As against the State or its political subdivisions there is no vested right in a pension accruing in the future from month to month. (*Beutel* v. *Foreman*, 288 Ill. 106; *Gibbs* v. *Minneapolis Fire Department Relief Ass'n*, 125 Minn. 174, 145 N. W. 1075.) A pension is a bounty springing from the appreciation and graciousness of the sovereign and may be given or withheld at its pleasure. (*Eddy* v. *Morgan*, 216 Ill. 437.) There is no contract on the part of the State to continue the payment of a benefit or annuity, and a change in the law affecting such benefit or annuity does not impair the obligation of a contract or deprive a person of property without due process of law within the meaning of the constitutional provisions invoked. (*Pennie* v. *Reis*, 132 U. S. 464, 10 Sup. Ct. 149; *Pecoy* v. *City of Chicago*, 265 Ill. 78.'"

The Illinois Supreme Court in *McCann* v. *Retirement Board*, 331 Ill. 193, reaffirmed its previous holding that there was no vested right in future installments of pensions.

In *People ex rel. Donovan* v. *Retirement Board*, 326 Ill. 579, cited with approval in the *McCann* case, the court on page 582 said:

"Appellee contends that this section, insofar as it affects awards made prior to July 2, 1925, contravenes section 1 of the fourteenth amendment to the constitution of the United States and section 2 of article 2 of the constitution of this State. This contention cannot be sustained. As against the State or its political subdivisions there is no vested right in a pension accruing in the future from month to month. (*Beutel* v. *Foreman,* 288 Ill. 106; *Gibbs* v. *Minneapolis Fire Department Relief Ass'n,* 125 Minn, 174, 145 N. W. 1075.) A pension is a bounty springing from the appreciation and graciousness of the sovereign and may be given or withheld at its pleasure. (*Eddy* v. *Morgan,* 216 Ill. 437.) There is no contract on the part of the State to continue the payment of a benefit or annuity, and a change in the law affecting such benefit or annuity does not impair the obligation of a contract or deprive a person of property without due process of law within the meaning of the constitutional provisions invoked."

The General Assembly of the State of Illinois passed the Miller Act in the light of the decisions of the State's Supreme Court which we have just cited. The court had never departed from the premise that the legislature at all times had complete control over pensions and that it considered them gratuities or bounties which could be granted, modified or withdrawn at the discretion of the legislature. There is no expression in the Miller Act indicative of any intention on the part of the legislature to relinquish that control over pensions which the Supreme Court consistently stated that it possessed. The legislature passed these laws granting pensions in the light of the decisions of the Supreme Court. The beneficiaries of these pension acts avail themselves of such provisions with full knowledge of such construction. The mandate of the Constitution to establish and maintain an efficient system of free schools was not to be subordinated to an improvident

or excessive second and additional pension for retired teachers, which excessive amount must be paid in the face of financial conditions requiring drastic economies of every kind in the schools themselves, and the courts will presume that the Assembly in passing the Act providing for pensions, and the pensioners in accepting the benefits of such Act, knew there could be no surrender by the legislature of a reserved right to at all times control, by virtue of the legislative prerogative, the amount of such pension.

Notwithstanding the unequivocal language used in this long line of cases, which consistently adhere to the principle that there is no vested right in a pension accruing in the future from month to month, counsel contend that expressions used by the Illinois Supreme Court in holding pension laws valid are to be construed as indicating a departure from such principles. In support thereof they cite *Hughes* v. *Traeger*, 264 Ill. 612; *People* v. *Abbott*, 274 Ill. 380; *Porter* v. *Loehr*, 332 Ill. 353, and *DeWolf* v. *Bowley*, 355 Ill. 530.

In the case of *Beutel* v. *Foreman*, 288 Ill. 106, the court in disposing of a similar argument made by counsel in that case, at page 110, said:

> "Counsel are in error in their argument that the decisions of this court last referred to (*Hughes* v. *Traeger*, 264 Ill. 612, *People* v. *Abbott*, 274 *id.* 380) intended to hold that the right of a pension was a vested right."

The court in the *Beutel* case went on to say that the court had particularly stated the opposite and cited numerous cases to show that by the use of such language, it was not intended to hold that there was such a thing as a vested right in a pension. The opinion in the case of *Beutel* v. *Foreman*, *supra*, was written by the same justice who wrote the opinion in the *People* v. *Abbott* case, *supra*.

The case of *Porter* v. *Loehr,* 332 Ill. 353, does not involve the question of decreasing a pension but merely decides that a pension or an increase in pension cannot be given to a person who is no longer in the service, because it is an extra compensation and therefore in violation of Section 19 of Article IV of the Constitution of Illinois, which prohibits the General Assembly from granting or authorizing extra compensation, fee or allowance to any public officer, agent, servant or contractor after service has been rendered or a contract made. What the court did say about pensions appears on page 359 as follows: "The establishment and maintenance of a system of pensions is not a public duty or obligation—it is merely a question of policy, to be determined by a law-making body." This case does not hold directly or indirectly that there is any vested property right in future pension installments.

In the case of *DeWolf* v. *Bowley,* 355 Ill. 530, cited by appellant, there was no question of vested property rights or power to alter, reduce or withdraw a pension.

The Supreme Court of Illinois in a very recent decision (rendered since its opinion in the case at bar), *Raines* v. *Board of Trustees Pen. Fund,* 365 Ill. 610 (April, 1937), construed an act of the Illinois Legislature of 1935 amending the Illinois State Teachers' Pension and Retirement Fund Act (Smith-Hurd Revised Statutes, Chap. 122, Par. 578-612), applying to the smaller school districts and cities in Illinois. In that case it reaffirmed all its previous holdings to the effect that a pension payable solely out of public funds is in the nature of a bounty that may be given, withheld, distributed or recalled at the pleasure of the Legislature.

As this decision is the last word from the Supreme Court of Illinois on the subject of pensions, we take the liberty of quoting from the opinion (page 614):

> "The whole difficulty in this case arises from a failure to distinguish between a pension fund and an annuity fund derived in part from voluntary contributions made under a statutory option to contribute or refrain from contributing. A pension is in the nature of a bounty springing from the appreciation and graciousness of the sovereign, and may be given, withheld, distributed or recalled at its pleasure. (*People* v. *Retirement Board*, 326 Ill. 579; *Porter* v. *Loehr*, 332 *id.* 353; *Pecoy* v. *City of Chicago*, 265 *id.* 78.) For this reason it is held that a pensioner has no vested right in a pension fund."

In *Dodge* v. *Board of Education*, *Beutel* v. *Foreman*, *People* v. *Hanson*, *People* v. *Retirement Board* and *Raines* v. *Board of Trustees Pen. Fund*, *supra*, the Supreme Court of Illinois has consistently held that as against the State or political subdivision, there is no vested right in a pension accruing in the future from year to year as provided for under the Miller Law and there is no contract on the part of the State to continue the payment of such a pension. The change in the law affecting such pension does not impair the obligation of a contract or deprive a person of property without due process of law within the meaning of the constitutional provisions invoked by appellants.

No case in Illinois overrules or modifies the principles laid down by the case of *Beutel* v. *Foreman*, 288 Ill. 106. These principles are affirmed in all of the pension cases involving the question of vested rights which have been determined by the Illinois Supreme Court since that decision was handed down. In the instant case the court below as we pointed out heretofore, stated that "The doctrine as we have seen is thoroughly established in this State that the State may control the giving or taking away of pensions." All of the pension cases in Illinois, we respectfully submit, uniformly hold (a) that pensions pay-

able solely out of public money are not based on contracts, (b) that future installments of such pensions are not vested property rights, (c) that they are mere expectancies based on anticipated continuation of existing law, and (d) that the State may reduce future installments of such pensions without violating the provisions of the State or Federal Constitution.

Decisions in Other Jurisdictions.

The courts of other jurisdictions are in accord with the rule laid down by the Supreme Court of Illinois in conformity with the decisions of this Court and hold that there are no vested rights in future installments of pensions payable solely out of public moneys.

In Ohio pensions are held to be gratuities and not contracts creating vested rights. The leading case on that subject is *Mell* v. *State, ex rel.,* 130 Ohio St. 306 (a voluntary retirement case decided December 18, 1935). The question involved in that case was whether the Board had a right to reduce the pensions of those who had accepted the provisions of the act by voluntarily retiring.

The Supreme Court of the State of Ohio held that a pension was a gratuity, subject to the control of the donor and such pension was created by law rather than by contract and granted to the relator no vested rights. In so holding the court said on page 309:

> "A pension is generally defined as a gratuity, at all times subject to the will of the donor. It is a creature of law rather than a contract, and the pensioner has no vested right in the continuance of a gratuitous allowance.
>
> 'The unquestioned rule is that a pension granted by the public authorities is not a contractual obligation but a gratuitous allowance, in the continuance

of which the pensioner has no vested right; and that a pension is accordingly terminable at the will of the grantor, either in whole or in part.' 21 Ruling Case Law, 242. See also *Walton, Admr.* v. *Cotton,* 60 U. S. (19 How.), 355, 15 L. Ed. 658; *United States* v. *Teller,* 107 U. S. 64, 2 S. Ct. 39, 27 L. Ed. 352; *Pennie* v. *Reis,* 132 U. S. 464, 10 S. Ct. 149, 33 L. Ed. 426; *Frisbie* v. *United States,* 157 U. S. 160, 15 S. Ct. 586, 39 L. Ed. 657; *Gibbs* v. *Minneapolis Fire Dept. Relief Ass'n,* 125 Minn. 174, 145 N. W. 1075, Ann. Cas., 1915C, 749, and note.

'Pensions * * * are gratuities. They involve no agreement of parties, and the grant of them creates no vested right.' *Lynch* v. *United States* (1934), 292 U. S. 571, 54 S. Ct. 840, 78 L. Ed. 1434. To the same effect, *Gibbs* v. *Minneapolis Fire Dept. Relief Ass'n, supra.*"

The court further said that pensions are gratuities even where the pensioner had made compulsory contributions to the fund (quoting *Pennie* v. *Reis, supra*), and held that the right to a pension not being a vested one, a pension board could in its discretion modify or alter the pension, and in so holding, on page 310, said:

"The right to a pension not being vested, the board has a right at any time, in its discretion, to modify or alter pension awards by increasing or decreasing them, so long as it acts reasonably and not in an arbitrary fashion. This right the board may exercise pursuant to and under its own rules and regulations then prevailing, and, in the absence of abuse, mandamus will not issue to control its discretion.

The board has not acted illegally in effecting a reduction of relator's pension. We find no abuse of discretion."

This holding was reaffirmed by the Supreme Court of Ohio in a decision rendered April 29, 1926, in the case of *State ex rel. Zupnik,* 131 Ohio St. 94.

In Kentucky the holding is the same. In *Head* v. *Jacobs*, 150 Ky. 290, it appeared that a pension act was adopted March 3, 1904, providing for pensions to policemen. The relators were on pension under that act. In 1912 the General Assembly passed an act repealing the former Act and enacting another law which was to take the place of it, and provided that all pensions then in force under the law theretofore existing be declared ended and abolished. It further provided that the pensions and benefits under the old Act be continued as such by the Board organized under the new Act, if, under the terms of the new Act they would be entitled to apply for and receive pensions or benefits. The Board of Pensions declined to transfer the relators to the new roll and they brought suit to compel the Board to do so. The only question to be determined was whether the applicants were entitled as a matter of right to be transferred to the new pension roll. The court held that they had no such right, and said, on page 293:

> "A pensioner has no vested right to his pension; the legislature which created it can recall its bounty at its discretion (22 Am. and Eng. Ency., 658). The act of 1912 taken as a whole shows a clear legislative purpose to allow no pension except to those disabled by reason of service in the department where the disability was contracted through such service, and to commit to the discretion of the board the question, what existing pensions should be transferred to the new roll."

We have pointed out heretofore that all the pension installments which accrued under the Miller Law, as in force prior to the amendment in July, 1935, had been paid in full.

The case of *Passaic National Bank & Trust Company* v. *Eelman*, 116 N. J. Law, 279, 183 A. 677, involved a retire-

ment pension like the one involved herein, and the court points out that the obligation to pay the periodic installment of pensions continues only by force of the statute, and that the legislature may repeal or modify it and thus relieve itself of payments which might arise *in futuro*. This we contend is the effect and the result sought by the passage of the Miller Law in 1935.

The court, in distinguishing between past due or accrued installments where rights vest and future installments of pensions where no rights vest said, on page 680 (183 Atl.):

> "* * * The rule is that compulsory deductions from the salaries of government employees, by the authority of the government, for the support of a pension fund, creates no contractual or vested right between such employees, nor those claiming under them, have any rights except as are conferred by the statute creating and governing the fund. But where the pension installments mature, the right of the pensioner to payment thereof vests. *Plunkett* v. *Board of Commissioners of Hoboken*, 113 N. J. Law 230, 173 A. 923, affirmed 114 N. J. Laws 273, 176 A. 341; *Pennie* v. *Reis*, 132 U. S. 464, 10 S. Ct. 149, 33 L. Ed. 426. This is an obligation imposed by the subsisting statute maintaining and governing the pension fund, and logically falls into the category of obligations enforceable in an action of debt at the common law."

With reference to the termination of the right to future installments of pensions, the court said, on page 680 (183 Atl.):

> "While the pension statute subsists, the obligation to pay the periodic installments continues by force thereof. I can perceive no rational basis for a distinction, in respect of this special execution statute, between installments payable under the Pension Act and a contract of hire. The obligation to pay the pension is fixed while the statute exists. While the Legislature may repeal or modify the act, and thus

terminate the pensioner's right to unaccrued installments, so may the private employer terminate the contract of hire for an indefinite term, and thus relieve himself of obligations to arise *in futuro*. But the installments of salary or wages that may accrue while the contract subsists are nevertheless subject to this form of execution."

In the case of *Macfarland* v. *Bieber*, 32 App. Cases D. C. 513, the facts disclose that a fireman voluntarily retired to accept the provisions of a firemen's retirement fund pension act. After his retirement, the act was amended to provide that persons who had retired must undergo medical examination to determine whether or not such pension should be continued in whole or in part. After the amendment became effective, the petitioner was directed to appear for examination pursuant to the amendment, and upon his failure to appear his pension was terminated. He thereupon sued, claiming that he had a vested right in the pension. In passing upon this proposition, the court stated (p. 518):

"The sole question presented by the record in this case is whether or not appellee acquired such a vested right in the pension granted by the act of Congress as could not be devested by a subsequent act of Congress."

After discussing and citing with approval *Pennie* v. *Reis*, 132 U. S. 464, the court, on page 520, said:

"In the case at bar, it is contended by counsel for appellee that the above case is not directly in point, and that here the contingency necessary to give appellee a vested property right in the fund had happened before the passage of the act of Congress requiring pensioners to subject themselves to medical examination, and that, having vested, it was beyond the power of Congress to destroy that right. With this contention, we cannot agree. The contingency in

the case at bar which gave appellee a property right in the fund in question was one continuing by the grace of Congress, subject to be discontinued or terminated at any time by Congress. His rights in the premises were not different or superior to those of a pensioner under the general pension laws of the United States. Referring to military pensioners, the court in *United States* v. *Teller*, 107 U. S. 64, 27 L. Ed. 352, 2 Sup. Ct. Rep. 39, said: 'No pensioner has a vested legal right to his pension. Pensions are the bounties of the government, which Congress has the right to give, withhold, distribute, or recall at its discretion.'"

Continuing, on page 521, the court said:

"A pension is not granted because of any property right the pensioner has or may acquire in it, but purely as an act of gratitude from the bounty of the government. The liability of the government to appellee was measured by the amount it owed him under existing law at the time Congress, by subsequent act, provided that further payments should cease upon his failure to comply with its provisions. Any amount due appellee at the time of the happening of the event (the making of the order discontinuing his pension), had vested, and could not be withheld. In this respect, the case at bar does not differ from the California case above cited. There, the right to the insurance vested at the death of the insured, providing the law was still in force. The whole of the amount of the insurance at once became due and payable. Here, all that had become vested was the amount of the pension due and payable on the date of its discontinuance by the order of the commissioners."

Congress passed a like pension act for policemen of the District of Columbia, and in *Rudolph* v. *U. S.*, 36 App. Cases D. C. 380, the court was called upon to determine whether or not the pension statute was contractual and whether the person retired had vested rights thereunder that could not be impaired by subsequent amendments.

In holding that the pensions were not contractual, the court, on page 384, said:

> "While the statute in this instance does not rise to the dignity of a contract, it partakes of the nature of a contract to the extent that it confers a bounty or gratuity in the form of a pension as an inducement for entering the service, and remaining therein for a given period of time. The statute differs from a contract in that the government may withdraw the benefits conferred at any time it may deem advisable, after a party enters the service, either before or after the right to a pension accrues. *Macfarland* v. *Bieber*, 32 App. D. C. 513. It also follows that, while there is no vested right in a pension which cannot be devested by the mere exercise of the legislative will, if relators have any rights, they are vested ones so long only as the statute in question remains in force and unchanged, subject to be devested at any time that Congress may desire."

Appellants cite California cases in support of their contention that the courts of California are not in accord with the general rule that pensions are mere bounties, and not subject to the control of the legislature.

The most recent of the California cases is *Casserly* v. *City of Oakland*, 6 Cal. (2d) 64, 56 P. (2d) 237. It appears in that case that the fund out of which the pensions were paid was made up in part by contributions of the pensioners. Nevertheless, the court held that the amount of the pension received on retirement was not vested so as to prevent a subsequent reduction.

Appellants cite the case of *Lage* v. *City of Marshalltown*, 212 Iowa, 53, as holding that a similar statute to the statute involved herein creates vested contractual rights. This decision in no way supports that contention. The facts differ materially from those in the case at bar. In the *Lage* case, the pension law under which plaintiff claimed

money was still in full force and effect, never having been revised, repealed or amended, and the only question involved was the right of the plaintiff to recover in *assumpsit* for a past due pension installment unpaid because of the failure of the city to make the necessary tax levy for that purpose.

The court held that inasmuch as the right to the payment of an installment of a pension was not based upon a contract, that such action would not lie and that the remedy was in mandamus to compel the levy of a tax for pension purposes.

Appellants cite the case of *State ex rel. Stafford* v. *State A. & I. Board,* 219 Wis. 31, in support of their theory that pensions cannot be reduced by a subsequent statute without impairing the obligation of a contract created under the prior statute. An examination of this Wisconsin case discloses that this question was in no way before the court. There was no second statute which it was claimed impaired the obligation of a prior one. The only point involved was whether or not the pension fund was liable to the estate of a deceased employee for the amounts the employee had paid into the fund during his lifetime. The court held that the fund was discharged from any liability upon the death of the contributor.

Another case cited by appellants in support of their theory of vested rights in pensions is *Retirement Board* v. *McGovern, et al.,* 316 Pa. 161. The case states that where the pension is payable out of a contributed reserve retirement system the law is different. On this point the court on page 170 said:

> "Where an allowance is made out of hand, gratuitously, and purely for past services, by the government, it is a pension, with all the attributes of a pen-

sion; but where the employee contributes a part of his salary or wages with a sum from the State or county under a *quasi* contractual relationship with the municipality or State, creating a contributed reserve retirement system, the results are different, retirement pay made therefrom is not a pension; the contributions by the government, from their very nature, must be viewed in a different light."

The case of *Fellows, Attorney General* v. *Connelly,* 193 Mich. 499, cited by appellants, we respectfully submit, throws no light whatsoever upon the issues in the case at bar. The effect of subsequent acts of the general legislature was in no way involved. The point before the court was the legality of an act requiring contributions from teachers to a pension fund.

Renz v. *Hibbing Firemen's Relief Association,* 186 Minn. 370, cited by the appellants as a case construing a similar statute and as holding that a vested right is created by such statute, we submit does not support such a contention. First, because the pension fund there involved was one to which the pensioner contributed, and second, because it did not involve a revision or change in a pension statute. The only question in that case was whether the pension board under its by-laws, which provided, among other things, "trustees shall have power to wholly revoke and annul the same whenever the physical condition which was the cause of the pensioning of such member, no longer exists" had the power to revoke or annul a disability pension previously allowed, and to require that the pensioner prove that his physical condition was such as to entitle him to continue to receive the pension. The court held that the burden of proving that there had been a change in the pensioner's condition warranting a revocation of the pension was on the trustees and his pension could not

be taken away from him without giving him an opportunity to be heard.

Kavanagh v. *Board of Police Commissioners*, 134 Cal. 50, cited by appellants, is a case involving a pension where the particular payment was past due and unpaid when the statute was amended. It is conceded that there were no past due and unpaid installments of pensions when the Miller Law became effective.

Trotzier v. *McElroy*, 182 Ga. 719, involves a pension payable out of a fund to which the petitioner had contributed one per cent of his salary during the time he was employed, whereby, as the court points out in the quotation on page 724, "the right acquired by the firemen are analogous to those possessed by members of mutual benefit societies (28 Cyc. 555)."

To the same effect is *Roddy* v. *Valentine*, 268 N. Y. 228, cited by appellants. There the pensioner had made contributions into the fund from which the pension was paid. Furthermore the case did not involve the right of the legislature to reduce a pension. The New York law took away the entire pension from the pensioner while he was in a public employment after retirement.

Bowler v. *Nagel*, 228 Mich. 434, cited by appellants, merely holds that the municipality had not the power to provide old age pensions for employees; that this authority must be conferred by statute.

In *Matter of Mahon* v. *Board of Education*, 68 N. Y. App. Div. 154, cited by appellants, the only point involved was the validity of an act conferring a pension upon teachers who had resigned before the pension was created.

Mead v. *Acton*, 139 Mass. 341, involves the validity of an act of the State of Massachusetts providing for the

payment of annuities to Civil War soldiers. The court held that the statute was unconstitutional because it authorized the raising of money by taxation for the exclusive benefit of individuals and appropriates for a private purpose money which can only be used for a public purpose.

It is therefore apparent that the decisions of the several states relied on by the appellants do not sustain their claim to contractual vested property rights in the future installments of pensions under the Miller Law as it existed prior to the act of July, 1935.

State decisions holding that pensions based on contracts are subject to the inherent right of the legislature to modify.

Many of the questions raised in the cases decided in the various states as well as those decided by the United States and Illinois courts were given consideration in the exhaustive opinion of the Texas Supreme Court in the recently decided case of *City of Dallas* v. *Trammell*, 101 S. W. (2d) 1009 (March, 1937).

That case involved a voluntary retirement pension law of Texas.

The original statute in the Texas case, like Section 3 of the Miller Law, permitted employees to retire after twenty years of service. The law provided for a fund, which was maintained by appropriations from the general revenue of the City and by one per cent deduction from the compensation of the employee. Upon retirement, the City was required to pay from the fund monthly payments of one-half of the salary received by the employee at the time of his retirement. The plaintiff Trammell, after complying with all the conditions applicable to him, retired and was granted a pension of $183.33 per month

under the applicable provisions of the law at the date of his retirement. He was paid this pension until the Act was amended. Pursuant to the amendment, his pension was reduced to $72.36 per month.

It was contended that the amendment or amended law impaired the obligation of plaintiff's contract to receive the pension provided for in the original Act. The gist of plaintiff's contention is that having accepted the benefits of the pension law applicable at the time he entered the service and having complied with the terms of the law and having retired after complying with all of the conditions applicable to him and having been granted a pension of $183.33 per month, he acquired a vested right in the pension fund to the amount of $183.33 per month, and that the subsequent legislation which reduced this pension was in violation of his constitutional rights.

It appears that Texas has held that pensions are not gratuities or donations but are a part of the contract of employment. The court held that plaintiff's right to receive the pension made payable under the original Act is predicated upon the anticipated continuance of that law and is subordinate to the right to abolish pensions payable thereunder, and in so holding reviewed many decisions of the courts of the various States and cited with approval the ruling of the Illinois Court in the case at bar.

The court held, on page 1011, quoting from its decision in *Byrd* v. *City of Dallas,* 118 Tex. 28, as follows:

> "The law pertaining to such employment is necessarily a part of the contract of employment and is read into the contract as fully as though it had been actually incorporated therein. * * * When an officer or employee coming within the statute is employed and evidences his assent to the pension scheme, he thereupon has a binding contract with his employer

for the stipulated salary and likewise to be 'entitled to participate' in the fund upon the terms prescribed. The *right to participate in such fund* is therefore not a gratuity or donation in any sense. It is as much a part of the agreed compensation as is the monthly stipend."

Proceeding to discuss the question in the case then under consideration, the court said:

"As we view the matter the true question involved is this: Does the employee, after retirement, have a vested right to participate in the pension fund to the extent of the full amount of the monthly installments granted to him at retirement; that is, does he have a vested right in future installments which cannot be affected by subsequent legislation tending to diminish the amount of such installments? Putting the matter in somewhat different language, we may properly inquire if the right which the employee has to participate in the pension fund, acquired by virtue of his contract, imposes upon the city and the Legislature of the state (the source of the city's power and authority in a matter of this kind) the inviolable duty of maintaining a pension fund of such proportions as will guarantee the right to defendant in error and others having equal rights with him to participate to the full extent of the monthly amounts previously awarded to them at the time the right to participate accrued? In other words, is the Legislature without constitutional power to repeal the laws upon which the pension system of the City of Dallas is based, or to modify their provisions in such way as to diminish the pensions payable to those who have become qualified to receive them so long as any one who has been granted a pension shall live?"

The court stated that there were two lines of decisions, one of which Dillon on Municipal Corporations points out, holds that when the particular event has happened upon which the money or a part of it is to be paid, the beneficiary of the pension under the pension system acquires a

vested right and it is not competent for the legislature or any other authority to deprive him of that vested right. The court points out that this statement is deduced from certain language in the opinion in *Pennie* v. *Reis,* 132 U. S. 464, 32 L. ed. 426, and states on page 1012:

> "This language, however, must be interpreted in the light of the particular facts in the case of *Pennie* v. *Reis,* and in other cases where it has frequently been followed. Under various laws of California governing the granting of pensions to policemen and other employees or to their beneficiaries, such pensions have usually, if not invariably, become payable in a lump sum, or as a fixed amount payable in monthly installments. This was true in the case of *Pennie* v. *Reis.* The necessary consequence of such laws is to make the pension a liquidated demand upon the retirement or death of the employee, and of course the right to participate in the existing fund to the extent of the particular or fixed liquidated sum is a vested one."

In the case at bar the pension provided was not for any lump sum, but was an annual one.

The court continued, on page 1012, as follows:

> "There is another line of decisions to the effect that, as pensions granted to employees of the state or its municipalities are purely of statutory origin, the employees, in making contracts of employment under which the right to participate in the pension fund accrues, do so in contemplation of the reserved right of the Legislature to amend or to repeal the laws on which the pension systems are founded; and therefore the right to participate in the fund, even though arising from the contract, is based upon the anticipated continuance of existing laws. Under this theory, there can be no vested interest in future installments of pensions which will prevent the Legislature from repealing the law upon which the system is founded, or modifying the law in such way as to diminish the amount of future monthly payments. • • •

> In our opinion, the rule that the right of a pensioner to receive monthly payments from the pension fund after retirement from service, or after his right to participate in the fund has accrued, is predicated upon the anticipated continuance of existing laws, and is subordinate to the right of the Legislature to abolish the pension system, or diminish the accrued benefits of pensioners thereunder, is undoubtedly the sound rule to be adopted." (Page 1013.)

The court in its decision discussed the Illinois cases on pensions, including the case now before this court, and said in reference to those decisions that it was convinced that the rule announced in them rested upon a sounder basis than decisions of courts which were apparently to the contrary.

In this same case the court also pointed out notwithstanding the so-called "California rule" that in the most recent pension case decided by the Supreme Court of California, *Casserly* v. *City of Oakland,* 56 P. (2nd) 237, 6 Cal. (2nd) 64, the court held that pensions payable in installments might be reduced by the legislature even though the pension was a part of the contract of employment.

In this same case, the Texas court had occasion also to refer to the case of *State ex rel. Holton* v. *City of Tampa,* 119 Fla. 556, 159 So. 292. In that case the Florida court had before it the constitutionality of an Act which reduced the amount of a pension previously awarded to a retired fireman under a pre-existing Act, and held that such law was not unconstitutional. It pointed out that while it recognized that a retired employe had a vested right to participate in an existing pension fund, nevertheless that such right was subject to modification stating at page 293 (So.):

> "But except in a case admitting of no other construction, a statutory retirement provision will not be construed as a contractual limitation binding on the

> legislative prerogative to fix the amount of retirement pay from time to time, so long as entire deprivation is not thereby attempted under the guise of regulation of the amount of compensation."

Appellants in the case at bar seek to have this Court hold that future installments of pensions may not be reduced. But it is evident that the overwhelming weight of authority and reason is to the effect that a legislature has the right to reduce future installments of a pension, whether the court considered the pension the result of the grant of a bounty, the entering into of a contractual relationship, or the establishment of a legislative status.

In view of the fact that the courts have so universally and for so many years recognized this legislative prerogative to modify these various types of pensions and have by their decisions approved modifications of them, we hardly need point out to the court that a decision such as is sought by the appellants in this case will disrupt the settled law of all the States and will have a widespread and disastrous effect.

It is obvious from an examination of the cases which we have cited that pension reductions have been made recently in many States and sustained and that such States have predicated the administration of their affairs on the validity of such laws.

II.

The Miller Law is an offer of a bounty and not an offer to contract.

This Court has recognized the fact that a State legislature may make an offer of bounty as distinguished from an offer to contract and that in such a situation the fact that one individual or one of a class of persons to whom that offer of bounty is made suffers certain detriments in order to qualify for such a bounty, does not vest any rights to that bounty.

Christ Church v. *County of Philadelphia*, 65 U. S. 300; 16 L. ed. 602.

Welch v. *Cook*, 97 U. S. 541, 24 L. ed. 1112.

Grand Lodge of the State of Louisiana v. *City of New Orleans*, 166 U. S. 143, 41 L. ed. 951.

Salt Manufacturing Company of East Saginaw v. *East Saginaw*, 80 U. S. 373, 20 L. ed. 611.

Wisconsin and Michigan Railway Company v. *Powers*, 191 U. S. 379, 48 L. ed. 229.

Stanislaus County v. *San Joaquin, etc. Company*, 192 U. S. 200, 48 L. ed. 406.

The case of *Rector, Christ Church Hospital* v. *County of Philadelphia*, 65 U. S. 300, 16 L. ed. 602, involved the constitutionality of a subsequent act which subjected to taxation certain hospital property which had been exempted from taxation by a previous act. The previous act which exempted the hospital property from taxation provided

> "that the real property, including ground rents, now belonging and payable to the Christ Church Hospital, in the City of Philadelphia, so long as the same

shall continue to belong to the said hospital, shall be and remain free from taxes."

It was contended that the act above quoted was perpetual, and that the act itself was in effect a contract. On the question of the act being a contract, the court, on page 604 (L. ed.), said:

> "This concession of the Legislature was spontaneous, and no service or duty, or other remunerative condition, was imposed on the Corporation. It belongs to the class of laws denominated *privilegia favorabilia*."

In the case at bar the State was in no way obligated to provide the $1,500.00 annual pension. It could have retired teachers without making any provision whatsoever in the retiring act for this additional pension.

In the *Christ Church* case it was pointed out that no service, duty or remuneration was imposed upon the hospital. In the case at bar the Miller Act made no requisition upon any teacher, either by way of contribution or by imposition of additional or different duties or services.

The act under consideration in the *Christ Church* case exempted property from taxation so long as the same should continue to belong to said hospital. The act under consideration in the case at bar, provided that the pension was to be paid for life. It cannot be contended that the grant in the one was any less perpetual than that in the other. On the question of the perpetuity of a grant, the court, on page 604 (L. ed.), said:

> "All laws, all political institutions, are dispositions for the future, and their professed object is to afford a steady and permanent security to the interests of society. Bentham says 'that all laws may be said to be framed with a view to perpetuity; but perpetuity is not synonymous to irrevocable; and the principle

on which all laws ought to be, and the greater part of them have been established, is that of defeasible perpetuity—a perpetuity defeasible by an alteration of the circumstances and reasons on which the law is founded'."

As to the nature of the privilege granted, the court, on page 604 *id.*, said:

"It is in the nature of such a privilege as the Act of 1833 confers, that it exists *bene placitum* and may be revoked at the pleasure of the sovereign."

We submit that the pensions provided in the Miller Law are even to a greater extent spontaneous; that the act belongs to the class of laws denominated *privilegia favorabilia,* as it is undoubtedly a special favor granted by the legislature to teachers, a privilege that the State was under no obligation or duty to grant.

In *Welch* v. *Cook, supra,* a statute exempted from taxation for ten years all property in the District of Columbia employed for manufacturing purposes. The statute was subsequently repealed and property used for such purpose was taxed.

The Supreme Court held that there was no impairment of contract and that the original contract was merely the bounty of the government.

In *Grand Lodge of the State of Louisiana* v. *City of New Orleans,* 166 U. S. 143, 41 L. ed. 951, the legislature, by an Act of 1855, exempted the hall of said corporation from city and parish taxation so long as it was occupied by said lodge. In 1879, a new Constitution was adopted by the State, which provided among other things that property of all charitable institutions be exempt from taxation provided the property so exempt be not used or leased for the purpose of private or corporate profit or income. Plain-

tiff rented out part of the property for commercial purposes. The local taxing authorities thereupon taxed the property of the plaintiff on the theory that under the Constitution it was not exempted from taxation. The corporation complained on the ground that the Act of 1855 constituted a contract between the State and the corporation and therefore the Constitution impaired the obligation of the contract; that if the Constitution be given the effect contended for by the local taxing authorities that it constituted an impairment of contract and divested them of vested rights. The court, on page 952 (L. ed.), said:

> "To make such a contract, however, there is the same necessity for a consideration that there would be if it were a contract between private parties. If the law be a mere offer of a bounty, it may be withdrawn at any time, notwithstanding the recipients of such bounty may have incurred expenses upon the faith of such offer."

The court held that the Act in question was one which the legislature might properly enact as a matter of public policy and in aid of a beneficent purpose, and that it was a mere gratuity or bounty which it was competent at any time to terminate and that it was so terminated by the Constitution of 1879.

The case at bar is similar to the *Grand Lodge* case in that in both instances the legislature was enacting an act of public benefit. As the court pointed out in its discussion in the *Grand Lodge* case, in this type of legislation the rule is that the legislature presumably reserves the right to alter such legislation as and when it sees fit. Being acts of public benefit, these are acts which are in the nature of bounties. The only cases where acts of this type have been held to create contractual relationships which cannot

be impaired without violating the Constitution of the United States have been cases where the legislature contracted by way of special charter or statute with individuals in order to induce such individuals to do something which the State could not otherwise compel them to do. In the case at bar there was no necessity for the State to induce the teachers to retire at any certain age. It might at any time have passed a law providing that they should be compulsorily retired at a given age.

Phelps v. *Board of Education of Town of West New York*, 81 L. ed. 388.

Groves v. *Board of Education* (Appendix, p. 102).

There was, therefore, no benefit accruing to the State as a result of offering the pensions in question. In the absence of the necessity to offer the teachers something in order to accomplish their retirement at a certain age, the statute in the case at bar, like that in the *Grand Lodge* case, should be construed as an offer of bounty rather than as an offer of contract.

A much cited case on the subject of whether or not an act of the legislature is an offer of a bounty or of a contract is the case of *Salt Mfg. Co.* v. *East Saginaw, supra.* This case involved an amendment to an Act of the General Assembly of the State of Michigan providing that all companies or corporations formed or which might be formed for the purpose of boring for and manufacturing salt in the State, and any and all individuals engaged or to be engaged in such manufacturing, should be entitled to an exemption from taxation of all property used for such purposes and a bounty of 10 cents for each and every bushel of salt manufactured from water obtained from boring in the State, provided that at least 5,000 bushels of salt were manufactured. In the bill filed it was urged

that the Salt Manufacturing Company was induced to form a corporation, perform experiments, erect necessary buildings and procure requisite machinery and that it drilled and found brine of sufficient strength to warrant the company in proceeding to manufacture salt. It did manufacfacture 6,358 barrels of salt. Later the Act was amended so as to limit the tax exemption to five years from the date of the organization of the company and limit the bounties to be paid to any one individual to the sum of $5,000.00. The court, on page 613 (L. ed), stated the issue involved in the following language:

> "The question in this case is: whether any contract was made at all, and, if there was, whether it was a contract determinable at will or of perpetual obligation?"

The court, in determining this issue, said at page 614 (L. ed):

> "Had the plaintiff in error been incorporated by a special charter, and had that charter contained the provision that all its lands and property used in the manufacture of salt should forever, or during the continuance of its charter, be exempt from taxation, and had that charter been accepted and acted on, it would have constituted a contract. But the case before us is not of that kind. It declares, in purport and effect, that all corporations and individuals who shall manufacture salt in Michigan from water obtained by boring in that State, shall be exempt from taxation as to all property used for that purpose and, after they shall have manufactured 5,000 bushels of salt, they shall receive a bounty of ten cents per bushel. That is the whole of it. * * * There is no obligation on any person to comply with the conditions of the law. It is a matter purely voluntary; and, as it is purely voluntary on the one part, so it is purely voluntary on the other part; that is, on the part of the Legislature, to continue, or not to continue the law."

In the *Salt* case the court pointed out that so far as the legislature was concerned, it had voluntarily made the offer; and as far as anybody accepting the offer was concerned, they proceeded without compulsion, and that in view of the fact that both parties had acted purely voluntarily they were also at liberty to recede at any time. Likewise in the case at bar the group of teachers who had not reached the age limit had the choice of continuing to teach or of accepting the additional pension. There was no compulsion either to continue to teach or to accept the additional pension. This being so, it must follow from the reasoning of the *Salt* case that the Illinois legislature was under no compulsion to continue the law as originally enacted.

The case of *Wisconsin* v. *Michigan Railway Company, supra,* involved another situation where a railroad company was operating under a statute which exempted it from taxation in certain respects and where such exemption was taken away by a subsequent statute. The railroad company contended that the repeal of the exemption impaired the obligation of a contract created by the original act. In discussing the issues before it, the court said, on page 231 (L. ed.):

> "The first and main question, then, is whether the act of 1893 purported to make an irrevocable contract with such railroad as might thereafter comply with its terms. The question is pretty well answered by a series of decisions in this court. A distinction between an exemption from taxation contained in a special charter, and general encouragement to all persons to engage in a certain class of enterprise, is pointed out in *East Saginaw Salt Mfg. Co.* v. *East Saginaw,* 13 Wall. 373, 20 L. ed. 611, S. C. 19 Mich. 259, 2 Am. Rep. 82. In earlier and later cases it was mentioned that there was no counter-obligation, service, or detri-

ment incurred that properly could be regarded as a consideration for the supposed contract. *Christ Church* v. *Philadelphia County*, 24 How. 300, 16 L. ed. 602; *Tucker* v. *Ferguson*, 22 Wall. 527, 22 L. ed. 805; *Grand Lodge, F. & A. M.* v. *New Orleans*, 166 U. S. 143, 41 L. ed. 951, 17 Sup. Ct. Rep. 523. See *Tomlinson* v. *Jessup*, 15 Wall. 454, 459, 21 L. ed. 204, 206. But whatever the ground, thus far attempts like the present to make a contract out of the clauses in a scheme of taxation which happen to benefit certain parties have failed. See further, *Welch* v. *Cook*, 97 U. S. 541, 24 L. ed. 1112, and *Manistee and N. E. R. Co.* v. *Commissioner of Railroads*, 118 Mich. 349, 76 N. W. 683, in which the state court deals with this very act.

It may be that a state, by sufficient words, might bind itself without consideration, as a private individual may bind himself by recognizance or by affixing a seal. A state might abolish the requirement of consideration altogether for simple contracts by private persons, and it may be that it equally might dispense with the requirement for itself. But the presence or absence of consideration is an aid to construction in doubtful cases,— a circumstance to take into account in determining whether the state has purported to bind itself irrevocably or merely has used words of prophecy, encouragement, or bounty, holding out a hope but not amounting to a covenant.

In the case at bar, of course, the building and operating of the railroad was a sufficient detriment or change of position to constitute a consideration if the other elements were present. But the other elements are that the promise and the detriment are the conventional inducements each for the other. No matter what the actual motive may have been, by the express or implied terms of the supposed contract, the promise and the consideration must purport to be the motive each for the other, in whole or at least in part. It is not enough that the promise induces the detriment or that the detriment induces the promise, if the other half is wanting. If we are to deal with this proviso in a general tax law as we should deal with an alleged simple contract, while, no doubt, in some cases be-

> tween private persons the above distinctions have not been kept very sharply in mind (*Martin* v. *Meles*, 179 Mass. 114, 117, 60 N. E. 397), it is clear that we should require an adequate expression of an actual intent on the part of the state to set change of position against promise before we hold that it has parted with a great attribute of sovereignty beyond the right of change. See *Vicksburg, S. & P. R. Co.* v. *Dennis*, 116 U. S. 665, 668, 29 L. ed. 770, 771, 6 Sup. Ct. Rep. 625. Looking at the case in this way, then, we find no such adequate expression. No doubt the state expected to encourage railroad building, and the railroad builders expected the encouragement; but the two things are not set against each other in terms of bargain. See *Covington* v. *Kentucky*, 173 U. S. 231, 238, 239, 43 L. ed. 679, 682, 19 Sup. Ct. Rep. 383."

In the opinion above quoted from, the court has taken occasion to point out certain basic differences between a statute which constitutes an offer to contract and a statute which constitutes an offer of bounty. One of the distinctions drawn, and which we think applicable to the case at bar, is the distinction made between a statute which grants a special charter to an individual and a statute which makes an offer to persons in a certain class of enterprise. Where the offer is to persons engaged in a certain class of enterprise, it is held that the offer is not one of contract. So, in the case at bar, where the offer is to persons engaged in a certain class of enterprise, to-wit: in teaching, rather than to individual teachers, we submit that the offer is not an offer to contract.

A further distinction pointed out by the court in the above opinion is that in cases where the statute is deemed to be an offer of contract, the statute should contain an adequate expression of an intent of the legislature to make a contract rather than to make a law. In cases where there is no adequate expression of an intent to enter into a

specific contract, the courts hold that the statute is not an offer to contract but a declaration of legislative policy.

So, in the case at bar, since there has been no expression on the part of the legislature of an intent to divest itself of sovereign power, therefore we submit that the statute in question does not constitute an offer of the legislature to irrevocably bind itself to pay pensions.

Another case in which it was contended that the statute constituted an offer, which when acted upon ripened into a contract, is the case of *Stanislaus County* v. *San Joaquin, supra.* The act of 1862, which it was contended constituted the offer, provided that every company organized as provided therein should have the power granted therein to establish, collect and receive rents, water rents, or tolls, which should be subject to regulation by the board of supervisors of the county or counties in which the works were situated, but which should not be reduced by the supervisor so low as to yield to the stockholders less than 1½% per month upon the capital actually invested.

In 1885, the legislature passed an act providing for the fixing by the board of supervisors of the county of the rates to be collected by water companies. Section 5 of the act authorized the various boards of supervisors to regulate and control water rates that might be charged in their respective counties. The act provided that said boards in fixing such rates should as soon as possible adjust them so that the net annual receipts and profits of said companies so furnishing such water to individuals should be not less than six nor more than eighteen per cent. upon the value of the canals, ditches, flumes and all other property actually used and useful to the appropriation and furnishing of such water. It appeared that the water company at the time of the passage of the last act, had

actually invested under the authority of the act of 1862, a capital amounting to $971,113.13 in money in the purchase and construction of its canals and other property actually used in furnishing the water, and that the property was actually worth that amount.

It is alleged that the amendatory act was in violation and repugnant to the provisions of the Constitution of the United States. The court said, at page 410 (L. ed.):

> "The question then arises whether language such as is contained in the third section of that act, and which is set forth in the foregoing statement of facts, amounts to a contract, to be protected by the Constitution of the United States. We think it does not.
>
> It seems to us that language of this nature cannot properly be construed as a promise or pledge that the limitation as to rates may not be altered at any time when, in the judgment of the legislature, it may be proper so to do. Water rates which might have been perfectly reasonable at the time of the passage of the act of 1862, although amounting to 1½ per cent per month upon the capital actually invested, might, in the course of years, become exceedingly burdensome to those who used the water, and amount to a very unreasonable compensation to the company for the water it sold."

When the Legislature of Illinois passed the provision for the additional pension of $1,500 per annum to retired teachers, conditions were different than they were in 1935. Not only was the early expense of $12,000 per annum increased a hundredfold when the year 1935 arrived, but the general financial condition of the country was vastly different, so that what might have been a light burden in 1926 became an extremely onerous one in 1935. It is no more reasonable to suppose that the Legislature of Illinois intended to part with its sovereign power in the matter of control of pensions by fixing an irrevocable amount by

an irrevocable contract than it was to suppose that it was the intention of the Legislature in the *Stanislaus* case that companies availing themselves of certain statutes should have the power forever to have a yield on capital invested in a certain fixed amount, regardless of the times or conditions.

Another line of cases which we submit leads irresistibly to the conclusion that in the case at bar the Miller Act was an offer of bounty and not an offer to contract is that line of cases which hold that public officers and employes acquire no vested rights to the incidents of their positions, such as salary, duties and tenure.

Butler v. *Pennsylvania,* 10 How. 402, 13 L. ed. 472.
Newton v. *Mahoning County Commissioners,* 100 U. S. 548, 25 L. ed. 710.
Crenshaw v. *United States,* 134 U. S. 99, 33 L. ed. 825.
Mississippi v. *Miller,* 276 U. S. 174, 72 L. ed. 517.
Phelps v. *Board of Education,* 81 L. ed. 388.

In the *Butler* case, *supra,* the court had occasion to say, on page 478 (L. ed.):

> "The contracts designed to be protected by the tenth section of the first article of that instrument (the Constitution) are contracts by which perfect rights, certain definite, fixed private rights of property, are vested. These are clearly distinguishable from measures or engagements adopted or undertaken by the body politic or state government for the benefit of all, and from the necessity of the case, and according to universal understanding, to be varied or discontinued as the public good shall require."

And again, on page 479:

> "We have already shown that the appointment to and the tenure of an office created for the public use,

and the regulation of the salary affixed to such an office, do not fall within the meaning of the section of the Constitution relied on by the plaintiffs in error; do not come within the import of the term 'contracts,' or, in other words, the vested, private personal rights thereby intended to be protected. They are functions appropriate to that class of powers and obligations by which governments are enabled, and are called upon, to foster and promote the general good; functions, therefore, which governments cannot be presumed to have surrendered, if indeed they can under any circumstances be justified in surrendering them."

The doctrine enunciated in the *Butler* case has been followed in all cases presented to this court down to and including the recently decided case of *Phelps* v. *Board of Education, supra.* In that case the court pointed out that the prohibition against reduction of salaries in the act of 1909 passed by the New Jersey Legislature was but a regulation of the conduct of the Board of Education and not a term of a continuing contract of indefinite duration. This conclusion was arrived at in spite of the fact that there was an express provision in the New Jersey statute prohibiting the Board of Education from reducing the salary of a teacher during his tenure of office. It should be noted that the Miller Act contained no provision, express or otherwise, to the effect that the pension granted by that act should not be reduced.

Can it logically be argued that although it is in the power of the legislature to change the fixed compensation of a teacher and to destroy the tenure of his office, that it is not in its power to change a pension granted to that same teacher? Surely, it cannot be logically assumed that the legislature intended to contract itself into a perpetually binding obligation to pay pensions of a certain sum to teachers to whom it was under no obligation or necessity

to give a pension, when the same results might be obtained without giving pensions.

The case at bar should be distinguished from a situation where it is necessary to make an offer of some sort in order to accomplish a desired result; that is, in order to have some benefit accrue to the offerer. In the case at bar the desired result, namely, the retirement of teachers at a certain age, could have been accomplished without any offer on the part of the State by the simple expedient of passing a law compulsorily retiring them without the Miller pension. This being so, it seems manifest that the offer was an offer of bounty and, as such, was subject to modification by the state.

III.

There is no consideration moving from appellants.

Nowhere in the record of this case is there any evidence that the provisions of the Miller Act induced any one of the appellants to resign at the time he or she did. Nowhere in the record does it appear that the compensation provided for by the Pension Act of 1909 [the Teachers' Pension and Retirement Fund Act] was not in itself a sufficient inducement to these appellants to retire when and as they did.

But even if such evidence was present in the record, it is submitted that the action taken by the appellants did not constitute such consideration as would support a valid and binding contract.

Appellants are somewhat vague as to what consideration, if any, they furnished which established a contractual right to an irrevocable and irreducible pension under the terms of the Miller Act. On page 42 of their brief, they

suggest there are three elements which might be construed as consideration. They confuse the consideration supposed to be furnished by them for contract purposes with what they say were the purposes of granting the pension.

They state, on page 42, of their brief:

> "In point I of this brief three elements, any one of which constituted consideration for a contract, were suggested. They are that the annuities for which appellants qualified were granted, (1) to insure future satisfactory services in the Chicago schools by teachers already in that employment, or who might thereafter enter it—by the reduction of turn-over; (2) to induce the giving up of active teaching positions carrying larger compensation by those whom it was thought desirable to replace by younger teachers; and (3) as compensation for services to be rendered, which compensation was to be withheld until a future determinative date based upon the age of the teacher."

Certainly if the pensions were granted to insure future satisfactory service that fact involved no consideration given on the part of the appellants. Salaries paid to teachers in the Chicago school system are for satisfactory service both present and future. It was not necessary for the Legislature to induce teachers to render satisfactory service by the passage of the Miller Law as the School Law already provided for their removal in the event that satisfactory services were not rendered (Par. 186, chap. 122, Ill. R. S., 1937).

Appellants vaguely suggest that some consideration is furnished by the fact that teachers are induced to stay in service longer and that as a result the turnover of teachers is reduced. This contention, of course, is inconsistent with their contention to the effect that the teachers were induced by the Miller Act to leave their employment.

The second consideration suggested by appellants is that they were induced by the provisions of the Miller Act to give up active teaching positions carrying larger compensation and were replaced by younger teachers. If this suggestion is interpreted to mean that a benefit accrued to the Board by the fact that younger teachers received smaller salaries than teachers who retired, then we submit the facts refute such a contention. The maximum salary of an elementary school teacher prior to retirement was $1,912.50 (R., 115). Upon retirement she would receive $1,500.00 under the Miller Act and $1,000.00 per annum from the Teachers' Pension and Retirement Fund (Par. 183, Chap. 122, Ill. R. S. 1937). The new teacher entering the service received a salary of $1,127.50 (R., 115). It is obvious, therefore, that the original cost to the Board of one teacher's salary of $1,912.50 is replaced by a cost of one teacher's salary of $1,127.50, plus a cost in the great majority of cases of $1,500.00 for the Miller pension paid to the retired teacher, and that instead of there being a saving to the Board there is an additional expense. The same increased cost results in the case of principals. The number of the latter, it is unnecessary to state, is so small compared to the number of teachers in the system that statements made by counsel as to losses suffered by them on retirement could hardly prove enlightening to the court on the subject of the general situation of the teaching staff.

If, on the other hand, this suggestion is construed to mean that the retiring teachers were induced to give up a larger income for a smaller one and thereby suffered a detriment which was consideration for a contract, it can also be shown that this contention is fallacious.

As has already been suggested, there is no reference in the record to show that any of the appellants was induced to retire because of the provisions of the Miller Act. As a matter of fact the provisions of the Miller Act, we submit, would be an inducement to stay in the service until the time for compulsory retirement had arrived, since the pension awarded to those retiring at the age of sixty-five years was $1,000.00; to those retiring at the age of sixty-six years was $1,100.00, sixty-seven years, $1,200.00; sixty-eight years, $1,300.00; sixty-nine years, $1,400.00, and seventy years, $1,500.00. In this reasoning we are supported by the actuary figures cited by the appellants (R., 70).

Moreover, the regular Teachers' Pension and Retirement Fund act in itself might well have been inducement enough for any of the appellants to retire, as it had been to countless numbers of teachers who had retired prior to the passage of the Miller Act.

Furthermore, as we have previously pointed out, it was in the power of the legislature at any time to provide for the compulsory retirement of teachers at any age. These teachers, therefore, were not surrendering any position in which they had a vested right. They were leaving a position, the tenure limit of which could be changed at any time by the legislature.

In this connection it should be pointed out that those appellants who were over seventy years of age were compulsorily retired by Section 1 of the original Miller Act. It is obvious that the contention that the Miller Act induced them to retire is unsound. They were retired by legislative prerogative.

Likewise it is obvious that the contention is unsound that those of appellants whose applications for retirement

have never been acted upon by the Board of Education were induced to retire by the provisions of the Miller Act, for the reason that it is apparent that those appellants had notice of the fact that the Act was to be amended so as to provide for a compulsory retirement at the age of sixty-five.

The third consideration suggested by the appellants, namely, that the pension was "compensation for services to be rendered, which compensation was to be withheld until a future determinative date based upon the age of the teacher," is difficult to understand, but if counsel means by this to adopt an expression that has been used in a few pension cases as one of the elements on which the courts sustained pension legislation, then it is obvious that the only benefit is the one conferred upon the teacher. No benefit accrues to the offeror and no detriment accrues to the offeree.

IV.

If the Miller Act is to be construed as a legislative contract, this court should interpret the terms of that contract in the light of decisions of the Supreme Court of Illinois made prior to the formation of the contract.

Assuming that a relationship was entered into by the appellants and the appellees which can be designated as a contractual relationship and that from that relationship appellants acquired certain rights, it is the contention of appellees that such a relationship gave to the appellants these rights subject to future divesting of them by the legislature.

It is elemental that any contract which we assume was entered into must be limited to what the contracting par-

ties intended to include in such a contract and what they understood or should reasonably have understood such contract to mean. If this court is to accept appellants' contention that a contract was entered into which gave them a vested right to a pension of Fifteen Hundred Dollars ($1,500.00) annually for life, it must find that the legislature of the State of Illinois intended to make an offer, or did make an offer, of such a pension irrevocably.

At the time of the adoption of the Miller Act the legislature knew that in every decision which the Supreme Court of Illinois had handed down on the subject of pensions of the type being considered in the case at bar the court had held that such pensions were bounties of the state which could be terminated at the will of the legislature.

The legislature knew that the Supreme Court of Illinois had steadfastly held to this interpretation throughout all its decisions in every conceivable factual situation. It had notice of the fact that this doctrine was enunciated as far back as 1905 in the case of *Eddy* v. *Morgan*, 216 Ill. 437, 449, and had been approved in *Ryan* v. *Foreman*, 262 Ill. 175 (1914); *Stiles* v. *Board of Trustees*, 281 Ill. 636 (1917), and *People* v. *Retirement Board*, 326 Ill. 579, 582 (1927); it knew the doctrine had been applied even where employes had been compelled to contribute to the pension fund created for their benefit, *Hughes* v. *Treager*, 264 Ill. 612 (1914); where the statute divesting the pensioners' rights had been passed subsequently to his appointment to office, *Pecoy* v. *City of Chicago*, 265 Ill. 78 (1914); and where the pensioner had actually made application for retirement on a pension prior to the passage of the act divesting him of his rights, *Beutel* v. *Foreman*, 288 Ill. 106 (1919); *People* v. *Hanson*, 330 Ill. 79 (1928).

The Supreme Court of the State of Illinois has adhered to this interpretation of pensions in all cases subsequent to the passage of the original Miller Act, *People* v. *Retirement Board, supra; People* v. *Hanson, supra; McCann* v. *Retirement Board,* 331 Ill. 193 (1928); *Dodge* v. *Board of Education,* 364 Ill. 547; *Raines* v. *Board of Trustees Pension Fund,* 365 Ill. 610.

Appellants knew, or in law are presumed to have known, the law of the state.

We contend that the law as to pensions in the State of Illinois, clear, unequivocal and long established as it was, whether good law or bad law, was an integral part of any contract which the legislature of the state might make regarding pensions.

Where a state becomes a party to a contract through legislative enactment of a statute, this court will interpret the terms of such a contract in the light of the decisions of the Supreme Court of that state made prior to the formation of the contract.

Anderson v. *Township of Santa Anna,* 116 U. S. 356, 29 L. ed. 633.

Ennis Waterworks v. *City of Ennis,* 58 L. ed. 1139, 233 U. S. 652.

Olcott v. *Board of Supervisors,* 83 U. S. 678, 21 L. ed. 382.

Douglas v. *Pike County,* 101 U. S. 677, 25 L. ed. 968.

Great Northern Railway Co. v. *Sunburst Oil and Refining Co.,* 287 U. S. 358, 77 L. ed. 360.

In *Anderson* v. *Township of Santa Anna, supra,* the Township of Santa Anna had voted to buy railroad bonds on July 21, 1866. An act to amend the railroad's charter

and extend its powers was passed February 28, 1867, empowering towns to purchase the bonds of this railroad upon the majority vote of their inhabitants and provided that where such a vote had already been taken that that vote complied with the provision of the statute. Suit was brought by a holder in due course to recover the amount of the bonds. The Circuit Court sustained a demurrer to the bill. Reversed by the Supreme Court of the United States.

It was contended as a defense to recovery in that suit that the Act of 1867 was unconstitutional as creating a municipal indebtedness against the municipality's will expressed in a legal manner. The court, in rejecting this contention, pointed out that a long line of Illinois cases decided prior to the purchase of the bonds in question had held that defective subscriptions of the type in the case at bar might in all cases be ratified where the legislature could originally have conferred the power to subscribe.

After discussing some of the decisions of the Illinois Supreme Court prior to the time that the bonds were purchased, the court said at page 634 (L. ed.):

> "These cases were all determined before the bonds in suit were issued. While they are not analogous in every respect to the one before us, they seem to rest upon the principle that the Legislature, when not restricted by the Constitution, may, by retroactive statutes, legalize the unauthorized acts and proceedings of subordinate municipal agencies, where such acts and proceedings would have been valid if done under legislative sanction previously given. The decision in *St. Joseph Township* v. *Rogers* only gave effect to principles announced by the state court prior to the issuing of the bonds. If, according to the law of Illinois, as declared by its highest court at the time the bonds in suit were issued, the Act of February

28, 1867, was a valid exercise of legislative power, the rights of the purchasers or holders, could not be affected merely by subsequent change of decision. For it is the long established doctrine of this court—from which, as said recently in *Green County* v. *Conness*, 109 U. S. 105 (Bk. 27, L. ed. 872), we are not disposed to swerve—that where the liability of a municipal corporation upon negotiable securities depends upon a local statute, the rights of the parties are to be determined according to the law as declared by the state courts at the time such securities were issued. In *Douglass* v. *County of Pike*, 101 U. S. 677 (Bk. 25, L. ed. 968), the *Chief Justice* said: 'After a statute has been settled by judicial construction, the construction becomes so far as contract rights are concerned, as much a part of the statute as the text itself, and a change of decision is, to all intents and purposes, the same in effect on contracts as an amendment of the law by means of a legislative enactment.' See also *County of Ralls* v. *Douglass*, 105 U. S. 732 (Bk. 26, L. ed. 958); *Olcott* v. *Supervisors*, 16 Wall. 678 (83 U. S. Bk. 21, L. ed. 382); *City* v. *Lamson*, 9 Wall. 477, 485 (76 U. S. Bk. 19, L. ed. 725, 729); *Boyd* v. *Alabama*, 94 U. S. 645 (Bk. 24, L. ed. 302); *Taylor* v. *Ypsilanti*, 105 U. S. 71 (Bk. 26, L. ed. 1012); *Thompson* v. *Lee County*, 3 Wall. 330 (70 U. S. Bk. 18, L. ed. 178); *Brown* v. *Mayor*, 63 N. Y. 244; Cooley, Const. Lim. 474, 477, 4th ed.; Dill. Mun. Corp. §46."

In *Ennis Waterworks* v. *City of Ennis*, 233 U. S. 652, 58 L. ed. 1139, the City of Ennis, in March, 1909, by ordinance, granted defendant's assignor the privilege of supplying water to the City for thirty years. In April, 1909, an ordinance was passed repudiating this grant, alleging that the prior ordinance was void. The City sued to have the contract alleged to have been granted by the first ordinance declared void. Judgment was rendered in favor of the City. The defendant sought to have the judgment below reversed on the theory that such a judgment gave effect to the subsequent ordinance and thereby impaired

the obligation of contract in violation of the Constitution of the United States.

This court, in dismissing the cause for want of jurisdiction, discussed only one of the various grounds challenging the jurisdiction of the court. The ground discussed was, in the language of the court (p. 1140, L. ed.):

> "That even if it be the duty of this court to determine for itself whether the state court rightly concluded that there was originally no contract, nevertheless there is no jurisdiction in this case because the court below, in deciding that there was originally no contract, based its action upon a rule of state law which had been so conclusively determined at the time the alleged ordinance relied on as a contract was adopted, that the assertion that there is a contract right is of so frivolous and unsubstantial a character as to afford no basis for jurisdiction."

In discussing this contention, the court said (p. 1140, L. ed.):

> "The face of the record so clearly manifests the correctness of the third proposition that we pass at once to its consideration. It is apparent on the face of the opinion of the court below that it did not at all rest its conclusion upon original reasoning concerning the asserted contract, but only applied to the decision of that question a doctrine which, long prior to the adoption of the ordinance relied on as a contract, had been announced by the court of last resort of Texas * * *."

In the case at bar it is apparent on the face of the opinion of the court below that the Supreme Court of Illinois did not base its conclusion that the Miller Act of 1926 did not constitute a contract upon original reasoning concerning the asserted contract. It was merely applying a long line of decisions which had been handed down for many years prior to the enactment of that statute.

In further discussing the issues in the *Ennis* case, the court said (p. 1141, L. ed.):

> "It is insisted, however, that since it is our duty when the assertion is made that contract rights are impaired to determine for ourselves whether or not there was a valid contract, we must hence now determine this controversy by resort to original reasoning without regard to the action of the court below in applying the state rule. But while the premise upon which this contention rests is well founded, the error lies in the deduction which seeks to make it applicable to this case. This is clearly the case, since the doctrine which the premise embodies is subject to this qualification, that where a contract which is relied upon arises from a state law or municipal ordinance having the effect of such law, in interpreting for itself such law or ordinance this court will not give to it a meaning in conflict with the settled rule of the state at the time the law was enacted or the ordinance adopted. In other words, that where we come to consider a contract arising from a state law or ordinance, we will treat it as if there was embodied in their text the settled rule of law which existed in the state at the time the state action relied upon as a contract was taken. (Citing cases.)"

In the case at bar the court is considering a pension law passed subsequent to the time when a long line of decisions had settled the interpretation to be given pension laws of this type. The law as expounded in the *Ennis* case would seem to make it compulsory for this court to give to the statute in question the effect that this long line of Illinois decisions has given to similar statutes.

We are aware of the fact that it has often been asserted by this court that where the interpretation of a contract is before it, it is not compelled to rely upon the interpretation arrived at by the court of the State where the contract was entered into, and we concede that such is the

rule where the State court has interpreted for the first time the contract in question. Thus, if the expression of the Supreme Court of Illinois in *Dodge* v. *Board of Education* had been the first expression of the Illinois Supreme Court to the effect that pensions were the bounty of the State and not contract obligations, then the Supreme Court of the United States would not be compelled to accept their interpretation of a statute giving pensions. The case is different, however, where prior to the formation of the contract the State by the decisions of its highest court has fixed an interpretation of the provisions of a statute. This distinction is recognized in the *Ennis* case, and we respectfully submit should be followed by this court.

In *Olcott* v. *Board of Supervisors, supra,* the court, in discussing the validity of a contract entered into by the Supervisors of Fond du Lac County, Wisconsin and a railroad company, in 1869 under a statute passed in 1867 where state decisions prior to the formation of the contract had favored the validity of such a contract, said at page 387 (L. ed.):

> "Parties have a right to contract, and they do contract, in favor of the law as declared to them when their engagements are formed. Nothing can justify us from holding them to any other rule."

The court then went on to show that the decisions of the Wisconsin Supreme Court, prior to the time of the formation of the contract, were determinative of the constitutionality of the Act of 1867.

In pointing out that a line of state decisions has indicated the effect which will be given a certain statute and the rights which will arise under the court's interpretation of that statute, this court has always given weight to

decisions prior to the enactment of the statute which is being interpreted.

Anderson v. *Township of Santa Anna, supra.*
Olcott v. *Board of Supervisors, supra.*
Douglas v. *Pike County,* 101 U. S. 677, 25 L. ed. 968.

In the latter case the court, after reviewing the Missouri decisions which are cited as fixing the rights of the contracting parties under a certain statute, said at page 971 (L. ed.):

> "While some of the decisions were rendered before the passage of the Township Act, it is so clear that the peculiar language of that act was the consequence of those decisions that we do not deem it unreasonable to give the effect they would have if made afterwards."

In *Great Northern Railway Co.* v. *Sunburst Oil and Refining Co., supra,* plaintiff sued to recover alleged overcharge for shipping. The charge made had been approved by the Railroad Commission of Montana and then subsequently disapproved. The transactions complained of occurred in 1926. In 1921 the Supreme Court of Montana had decided that after certain preliminary conditions were satisfied, an action for restitution for alleged overcharges might be maintained against a carrier. Following this decision the trial court awarded restitution to the plaintiff.

Anent the action of the trial court, this court, said, on page 365 (L. ed.):

> "The trial court did not impair a Federal right by giving to a statute of the state the meaning that had been ascribed to it by the highest court of the state, unless such impairment would have resulted if the meaning had been written into the statute by the legislature itself. But plainly no such consequence would have followed if that course had been pursued. The

Doney case was decided, as we have seen, in 1921. The transactions complained of occurred between August, 1926, and August, 1928. Carrier and shipper understood at that time that the rates established by the Commission as the delegate of the legislature were provisional and tentative. Valid for the time being the rates indubitably were a prop for conduct while they stood, but the prop might be removed, and charges, past as well as present, would go down at the same time. By implication of law there had been written into the statute a notice to all concerned that payments exacted by a carrier in conformity with a published tariff were subject to be refunded if found thereafter, upon sufficient evidence, to be excessive and unreasonable. The Constitution of the United States would have nothing to say about the validity of a notice of that tenor written in so many words into the body of the act. Carrier and shipper would be presumed to bargain with each other on the basis of existing law. *Coombes* v. *Getz*, 285 U. S. 434, 76 L. ed. 866, 52 S. Ct. 435. The validity of the notice is no less because it was written into the act by a process of construction. *Supreme Lodge, K. P. v. Meyer*, 265 U. S. 30, 32, 68 L. ed. 885, 887, 44 S. Ct. 432. The inquiry is irrelevant whether we would construe the statute in the same way if the duty of construction were ours and not another's.

Supreme Lodge, K. P. v. Meyer, supra (265 U. S. 33, 68 L. ed. 888, 44 S. Ct. 432). Enough for us that the construction, whether we view it as wise or unwise, does not expose the court that made it to the reproach of withholding from the carrier the privileges and immunities established by the constitution of the nation."

In the case at bar long before the hour of making the alleged contract between appellants and appellees, the Supreme Court of Illinois had held time and time again that pensions were bounties of the State of Illinois and as such were revocable at the will of the State. These decisions made as they were before the hour of contract, should be considered reservations of the right of the state to modify the Miller Law.

V.

The Miller Law of 1935 was passed pursuant to the sovereign powers of the State of Illinois. It is a local governmental law and as such should be sustained by this court.

Appellees have heretofore contended in their motion to dismiss that this court is without jurisdiction to review the decision of the court below because such review would involve passing upon a statute of the State of Illinois passed pursuant to its sovereign power and the mandate of its State constitution.

The establishment, administration, maintenance and operation of a system of free schools is one of the declared sovereign powers of the State, reserved to the State, and is primarily the affair of the State. *Gong Lum* v. *Rice,* 275 U. S. 78, 72 L. ed. 172, *Cummings* v. *Richmond County Board of Education,* 175 U. S. 528, 44 L. ed. 262, *Marshall* v. *Donovan,* 10 Bush. (Ky.) 681, 690.

Moreover this court has declared its great reluctance to interfere with the exercise of such a sovereign power, stating in *Cummings* v. *Richmond County Board of Education, supra,* at page 266 (L. ed.):

> The education of the people in schools maintained by State taxation is a matter belonging to the respective States and any interference on the part of the Federal authorities with the management of such schools cannot be justified except in the case of a clear and unmistakable disregard of rights secured by the supreme law of the land."

In Illinois, the Constitution provides that

> "The General Assembly shall provide a thorough and efficient system of free schools whereby all children

of this State may receive a good common school education.'' Art. VIII, Sec. 1.

By virtue of this provision, the General Assembly has full authority to enact such laws as it may deem necessary and expedient for the proper administration and regulation of public schools in the promotion of their efficiency.

Keime v. *Community High School District,* 348 Ill. 228.

Kinnare v. *City of Chicago,* 171 Ill. 332.

Lindstrom v. *City of Chicago,* 331 Ill. 144.

Groves v. *Board of Education* (Appendix, p. 102).

The foregoing provision of the Constitution of the State of Illinois and the Illinois cases cited *supra* establish the proposition that the regulation of education is one of the sovereign powers of the State.

This court, in *Home Building & Loan Association* v. *Blaisdell,* 290 U. S. 398, 434, 78 L. ed. 413, 426, in pointing out the effect which the exercise of a sovereign power would have on claimed contractual rights said:

> ''Not only is the Constitutional provision qualified by the measure of control which the State retains over remedial processes but the State also continues to possess authority to safeguard the vital interests of its people. It does not matter that legislation appropriate to that end 'has the result of modifying or abrogating contracts already in effect.' *Stephenson* v. *Binford,* 287 U. S. 251, 77 L. ed. 288. Not only are existing laws read into contracts in order to fix obligations as between the parties, but the reservation of essential attributes of sovereign power is also read into contracts as a postulate of the legal order. The policy of protecting contracts against impairment presupposes the maintenance of a government by virtue of which contractual relations are worth while,—a government which retains adequate authority to se-

cure the peace and good order of society. The principal of harmonizing the constitutional prohibition with the necessary residuum of state power has had progressive recognition in the decisions of this Court. * * *

"The reservation of this necessary authority of the state is deemed to be a part of the contract. In the case last cited, the Court answered the forcible challenge of the state's power by the following statement of the controlling principle,— a statement reiterated by this court speaking through Mr. Justice Brewer, nearly fifty years later, in *Long Island Water Supply Co.* v. *Brooklyn*, 166 U. S. 685, 'But into all contracts, whether made between states and individuals, or between individuals only, there enter conditions which arise not out of the literal terms of the contract itself; they are superinduced by the preexisting and higher authority of the laws of nature, of nations or of the community to which the parties belong; they are always presumed, and must be presumed, to be known and recognized by all, are binding upon all, and need never, therefore, be carried into express stipulation, for this could add nothing to their force. Every contract is made in subordination to them, and must yield to their control, as conditions inherent and paramount wherever a necessity for their execution shall occur.' * * * The economic interests of the state may justify the exercise of its continuing and dominant protective power notwithstanding interference with contracts. * * *

"And if state power exists to give temporary relief from the enforcement of contracts in the presence of disasters due to physical causes such as fire, flood or earthquake, that power cannot be said to be nonexistent when the urgent public need demanding such relief is produced by other and economic causes."

Other decisions have pointed out that the State's regulation of education comes within the purview of police powers, *Barbier* v. *Connolly*, 113 U. S. 27, 28 L. ed. 923; *Interstate Const. Co.* v. *Massachusetts*, 207 U. S. 79, 52 L. ed. 111, and the State's exercise of such power should not

be interfered with by this court. As was said in *Louisville etc. R. Co.* v. *Kentucky,* 161 U. S. 677, 701, 40 L. ed. 849, 859:

> "Whatever is contrary to public policy or inimical to the public interests is subject to the police power of the State and within legislative control and in the exertion of such power the legislature is vested with a large discretion which if exercised bona fide for the protection of the public is beyond the reach of judicial inquiry."

This court has pointed out that the exercise of such power will not be interfered with by this court even if it should impair the obligation of a contract. Thus in *Manigault* v. *Springs,* 199 U. S. 473, 480, 50 L. ed. 274, 278, the court said:

> "It is the settled law of this court that the interdiction of statutes impairing the obligation of contracts does not prevent the state from exercising such powers as are vested in it for the promotion of the common weal, or are necessary for the general good of the public, though contracts previously entered into between individuals may thereby be affected. This power, which, in its various ramifications, is known as the police power, is an exercise of the sovereign right of the government to protect the lives, health, morals, comfort, and general welfare of the people, and is paramount to any rights under contracts between individuals."

The *Manigault* case was quoted from with approval in the *Blaisdell* case, *supra.*

The Miller Act of 1935 was clearly enacted for the public good and had for its object the lessening of the tax burden on the people of the State of Illinois during a time of financial depression and tax crisis, and also the readjustment and fair realignment of the two pensions granted to

retired school teachers of Chicago with the salaries paid to teachers active in the service.

This situation was referred to by the Supreme Court of the State of Illinois in *Groves* v. *Board of Education, supra,* where the Court says:

> "The act (Miller Act of 1925 as amended in 1927) made no provision whatever for the levy of an additional tax for funds out of which Miller Act annuities were to be paid. The Board, therefore, was required to pay them out of the existing taxes levied for educational purposes, and the money set aside for current salaries of active teachers was decreased by the amount of such annuities."

The right of the Legislature to exercise its sovereign power in the economic interests of the State is made clear in *Home Building & Loan Assn.* v. *Blaisdell, supra,* wherein the court said on page 428 (L. ed.):

> "The economic interests of the State may justify the exercise of its continuing and dominant protective power notwithstanding interference with contracts."

VI.

Where a statute is claimed to create a contractual right, this court will give weight to the construction of the statute by the courts of the state, unless such construction is palpably erroneous.

The court below in unequivocal terms held that the pensions paid under the Miller Law were not based upon contract. On page 550 of its opinion found in 364 Ill. 547, it says:

> "As stated by counsel for appellants in their reply brief, 'Appellants' case rests upon the proposition that they have vested property rights to the payment of future installments of the annuities on the basis fixed

by the law in force at the time they retired, or being entitled to retire, or made application for retirement.' ''

In deciding adversely to this contention, the court on page 552 said:

> "A right, to be within the protection of the constitution, must be a vested right. It must be something more than a mere expectancy based upon an anticipated continuance of an existing law. If before rights become vested in particular individuals, the convenience of the state induces amendments or repeal, such individuals have no cause to complain. * * * The decisions of this court have uniformly been that pensions are not based upon contract but are mere expectancies based upon anticipated continuance of existing law, and that future installments of pensions are not vested property rights. It follows that the state may reduce future installments of pensions without violating the provisions of the state or federal constitution."

This decision is sustained not only by the cases cited in that opinion but the principles announced have been adhered to in all Illinois cases without exception.

In the recent case of *Phelps* v. *Board of Education, supra,* it was contended that under the statute in question there was granted to teachers, permanency in position at fixed salaries which could not be impaired by a subsequent act of the legislature. This contention is identical in principle with that of appellants, who contend that the Illinois statute granted to them permanency of pension at fixed pension rates, which could not be changed by subsequent acts of the legislature.

In order to point out to the court the similarity of the *Phelps* case to the one at bar, we set up in parallel columns the contentions and the State Court decisions in the respective cases:

PHELPS CASE.

1. Appellants contended that the decision of the State Court violated Art. 1, Sec. 10 and Sec. 1 of the 14th Amendment of the Federal Constitution.

2. Appellants contended that the statute pertaining to tenure of teachers prior to its amendment conferred upon teachers a contractual status which the legislature was powerless to alter.

3. Appellants contended that the legislature having provided that the compensation should not be reduced, violated the Constitution when it subsequently reduced or authorized a reduction in compensation.

4. The Supreme Court of New Jersey held that the tenure act of 1909 "established a status for teachers but * * * failed to see that it established a contractual one that the legislature may not modify" and the court further held that "the status of tenure teachers, * * * is in essence dependent on a statute, like that of the incumbent of a statutory office, which the legislature at will may abolish or whose emoluments it may change."

DODGE CASE.

1. Appellants contend that the decision of the State Court violated Art. 1, Sec. 10 and Sec. 1 of the 14th Amendment of the Federal Constitution.

2. Appellants contend that the Miller Law prior to its amendment conferred on retired teachers or those who made application for retirement a contractual status which the legislature is powerless to alter.

3. Appellants contend that the legislature having fixed the amount of pension at $1500, violated the Constitution, when it reduced it to $500.

4. In the case at bar, the Supreme Court of Illinois held "The decisions of this court have uniformly been that pensions are not based on contract but are mere expectancies based upon anticipated continuance of existing laws, and that future installments of pensions are not vested property rights. It follows that the State may reduce future installments of pensions without violating the provisions of the State or Federal Constitution."

This court in the *Phelps* case, *supra,* in passing upon the weight that should be given to the decision of the Supreme Court of New Jersey and in affirming it, said:

> "This court is not bound by the decision of a state court as to the existence and terms of a contract, the obligation of which is asserted to be impaired, but where a statute is claimed to create a contractual right we give weight to the construction of the statute by the courts of the state. Here those courts have concurred in holding that the act of 1909 did not amount to a legislative contract with the teachers of the state and did not became a term of the contracts entered into with employes by boards of education. Unless these views are palpably erroneous we should accept them."

In support of this holding this Court cited the cases of *Freeport Water Co.* v. *Freeport,* 180 U. S. 587, 595, *Tampa Water Works* v. *Tampa,* 199 U. S. 241, 243; *Milwaukee Elec. Ry. Co.* v. *Railroad Comm.,* 238 U. S. 174, 184; *Seton Hall College* v. *South Orange,* 242 U. S. 100, 103, *Coombes* v. *Getz,* 285 U. S. 434, 441.

Conclusion.

We respectfully submit that the court should sustain the motion to dismiss for the reasons heretofore stated in our statement opposing jurisdiction and for the additional reasons as set forth in the foregoing brief and argument.

In the alternative, we respectfully urge that the decision of the court below should be affirmed and in support thereof we submit that appellees have shown that no offer was ever made by the State of Illinois to appellants to enter into a contract whereby they would, upon compliance with the terms of the Miller Act, receive $1,500.00 annually for life; that even if such an offer was made, appellants furnished no consideration which would establish

the contract contended for; that even if the contract was established, the right of the legislature to modify the provisions of that contract was an essential part of and included as a provision in the Miller Law, and therefore that in decreasing the pensions of appellants the State of Illinois did not violate any of the provisions of the Constitution of the United States; that in any event, the Miller Law was passed pursuant to the sovereign power of the State of Illinois and should be sustained as an exercise of such power; that this court should affirm the decision of the lower court because that decision represents the long settled rule of law in Illinois as well as in other jurisdictions.

Respectfully submitted,

RICHARD S. FOLSOM,
FRANK S. RIGHEIMER,
Attorneys for Board of Education of the City of Chicago, Appellee.

BARNET HODES,
Corporation Counsel of the City of Chicago, Appellee.

RALPH W. CONDEE,
FRANK R. SCHNEBERGER,
Of Counsel.

APPENDIX.

Miller Law as in Force Prior to 1935 Amendments.

"An Act to Provide for the Compulsory and Voluntary Retirement of Teachers, Principals, District Superintendents, and Assistant Superintendents, and for the Voluntary Retirement of Superintendents of Schools and Members of the Board of Examiners, and for the Payment of Retirement Annuities.' (Approved May 19, 1926; title as amended by act approved June 17, 1929, L. 1929, p. 732.)

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

614a. Retirement of Teachers, Etc.) Sec. 1. In every city in this State having a population exceeding 250,000 inhabitants, the board of education of such city shall retire from active service on February 1 and August 1 of each year, all teachers, principals, district superintendents, and assistant superintendents in the public schools of such city in accordance with the following schedule:

(a) In the year 1926 all teachers, principals, district superintendents, and assistant superintendents, seventy-five or more years of age, shall be retired from active service.

(b) In the year 1927 all teachers, principals, district superintendents, and assistant superintendents seventy-four or more years of age shall be retired from active service.

(c) In the year 1928 all teachers, principals, district superintendents, and assistant superintendents seventy-three or more years of age, shall be retired from active service.

(d) In the year 1929 all teachers, principals, district superintendents, and assistant superintendents seventy-two or more years of age, shall be retired from active service.

(e) In the year 1930 and in each and every year thereafter, all teachers, principals, district superintendents, and assistant superintendents seventy or more years of age, shall be retired from active service.

614b. Annual Pension.) Sec. 2. Each person so retired from active service who served in the public schools of such city for twenty or more years prior to such retirement, shall be paid the sum of fifteen hundred dollars ($1,500.00) annually and for life from the date of such retirement from the money derived from the general tax levy for educational purposes: Provided, that any teacher, principal, district superintendent, or assistant superintendent so retired and receiving such annuity shall be subject to the call of the superintendent of schools in such city for consultation and advisory service. And, provided further, that nothing in this Act contained shall in any way impair or prejudice any rights of a teacher, principal, district superintendent, or assistant superintendent so retired to annuity under other statutory provisions concerning any teachers' pension fund, or teachers' pension and retirement fund, established in accordance with the provisions of any statute of this State; and shall not repeal or modify any other such statutory provisions.

614c. Voluntary Retirement—Annuity.) Sec. 3. Any superintendent of schools or member of the board of examiners and all teachers, principals, district superintendents, and assistant superintendents, now or hereafter serving in any of the aforesaid capacities in the public schools of such city, and whose services in any one or more of any

educational positions in the public schools of such city within the last twenty (20) years prior to retirement under this Act, shall aggregate, when taken together, fifteen (15) years or more, and who have served in the public schools of the United States for twenty-five years or more, and who are sixty-five (65) or more years of age, and who have not reached the age of compulsory retirement, as provided in sections one and two of this Act, shall upon their own request, be retired from active service and thereafter be paid annuities for life from the moneys derived from the general tax levy for educational purposes; provided that no superintendent of schools or member of said board of examiners shall be subject to compulsory retirement under the provisions of this Act, during his or her term of office.

Such annuities shall be paid respectively according to the following table of ages and annuities annually:

Age 65.....Ten hundred dollars.....($1,000)
Age 66.....Eleven hundred dollars.....($1,100)
Age 67.....Twelve hundred dollars.....($1,200)
Age 68.....Thirteen hundred dollars.....($1,300)
Age 69.....Fourteen hundred dollars.....($1,400)

And provided that the age of sixty-five (65) and at any year of age thereafter, the board of education of such city may require a physical or a mental examination of any such teacher, principal, district superintendent, or assistant superintendent upon the request of the superintendent of schools of such city and if any such teacher, principal, district superintendent, or assistant superintendent be found incapacitated for service after trial as already or hereafter provided by law he shall be retired at the annuity above provided for that age of voluntary retirement.

And provided further, that all such superintendents of schools, members of the board of examiners, teachers, prin-

cipals, district superintendents, and assistant superintendents shall be subject to the same conditions as to advisory service as provided for in Section 2 of this Act. Nothing contained in this Act shall in any way impair or prejudice the right of any superintendent of schools, member of the board of examiners, teacher, principal, district superintendent, or assistant superintendent so retired to annuity under other statutory provisions concerning any teachers' pension fund or teachers' pension and retirement fund established in accordance with the provisions of any statute of this State, and the payment to be made under this section, or the Act which it amends, shall be in addition to any such annuity."

(As amended by Act approved June 17, 1929. L. 1929, p. 732.)

Section added: L. 1927, p. 792.

(Smith-Hurd Ill. R. S. 1933, Ch. 122, Par. 614a (Sec. 1), 614b (Sec. 2) and 614c (Sec. 3).)

Miller Act of 1935.

(Act Complained of.)

"An Act to Provide for the Compulsory Retirement of Teachers, Principals, District Superintendents, and Assistant Superintendents, and for the Payment of Retirement Annuities.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

614a. Retirement of Teachers, etc.) Sec. 1. In every city in this State having a population exceeding 250,000 inhabitants, the board of education of such city, as soon as practical after this law becomes effective, shall retire all teachers, principals, district superintendents and assistant

superintendents in the public schools in such city, who are sixty-five or more years of age, and thereafter shall retire all teachers, principals, district superintendents and assistant superintendents in the public schools of such city, on attaining the age of sixty-five years.

614b. Annual Pension.) Sec. 2. Each person so retired from service shall be paid the sum of Five Hundred Dollars ($500.00) annually and for life from the date of such retirement from the money derived from the general tax levy for educational purposes: Provided, that any teacher, principal, district superintendent, or assistant superintendent so retired and receiving such annuity shall be subject to the call of the superintendent of schools in such city for consultation and advisory service: And, provided further, that nothing in this Act contained shall in any way impair or prejudice any rights of a teacher, principal, district superintendent, or assistant superintendent so retired to annuity under other statutory provisions concerning any teachers' pension fund, or teachers' pension and retirement fund, established in accordance with the provisions of any statute of this State.

614c. Sec. 3. Repealed."

Smith-Hurd, Ill. R. S. 1935, Chap. 122, par. 614a, sec. 1; par. 614b, sec. 2; par 614c, sec. 3.

Dodge v. Board of Education (364 Ill. 547).

IN SUPREME COURT OF ILLINOIS
June Term, A. D. 1936
Number 23661. Agenda 24

CHESTER C. DODGE et al., Appellants,

vs.

BOARD OF EDUCATION OF THE CITY OF CHICAGO et al., Appellees
Appeal from Superior Court, Cook County
OPINION—Filed October 27, 1936

"Mr. Justice STONE delivered the opinion of the Court:

Appellants' bill filed in the Superior Court of Cook County seeking to enjoin appellees, Board of Education of the City of Chicago and others, from reducing teachers' pensions as applied to them, was dismissed for want of equity. They bring the cause here on the ground that a constitutional question is involved in the construction given the act by the chancellor.

The original complaint was filed by twenty plaintiffs as a class suit on behalf of themselves and all others similarly situated. The Board of Education of the City of Chicago and certain of its officers and the City of Chicago and certain of its officers were made defendants. The act which is made the basis of this complaint is commonly known and is hereinafter referred to as the Miller Act. It is an act having to do with teachers' pensions (Smith-Hurd Stat. 1927, Chap. 122, par. 614a, p. 2586). Complaint of the appellants is, that by the revision of that act in 1935 vested rights of those teachers who had retired, or sought to do so, prior to the enactment of such revision were taken away. These appellants all have either retired or sought

to retire before the 1935 amendment of the Miller Act. The only provision of that amendment here attacked has to do with the reduction of pensions provided by the act.

This act was originally passed in 1926 and entitled, "an act to provide for the compulsory retirement of teachers, etc., and the payment of retirement annuities." The act provides a pension in addition to that provided by the Teachers' Pension act of 1909. As originally enacted the Teachers' Pension act provided for voluntary retirement of teachers. The Miller act provided for compulsory retirement of teachers at the age of 70 and for the payment of retirement annuities of $1500 per annum. This was a separate act and in nowise affected the Teachers' Pension law which provided a pension of $1,000 per year on voluntary retirement. At the time of its passage the Teachers' Pension act was also modified, providing compulsory retirement. The additional annuities under the Miller act are paid solely out of funds raised by taxation. Teachers contribute nothing toward that fund. In 1927 the Miller act was amended to fix, by Section 3, the annuities on a sliding scale from $1,000 to $1,500 to teachers voluntarily retiring between the ages of 65 and 70. This, to teachers retiring under 70, was a reduction from the flat amount of $1,500 given by the original act.

By the amendment effective on July 12, 1935, the title of the act was amended to read as follows: "An act to amend sections 1 and 2 and the title of 'An act to provide for the compulsory and voluntary retirement of teachers, principals, district superintendents, and assistant superintendents, and for the voluntary retirement of superintendents of schools and members of the board of examiners, and for the payment of retirement annuities,' approved May 19, 1926, as subsequently amended, and to re-

peal section 3 of said act." (Session Laws of 1935, p. 1378,) This amended act abolished the provisions for voluntary retirement and fixed the compulsory retirement age at 65 years. The annuities were reduced to a flat rate of $500 annually. A very large number of former teachers have joined in this proceeding, as did some who sought to retire in May and June, 1935, under the Miller act, before the enactment of the 1935 amendment.

Appellants' complaint is bottomed on the proposition that the rights of teachers retiring or entitled to retire prior to the 1935 amendment were fixed and determined by the law in effect at the time of their retirement or written request for retirement and could not be abolished or reduced by subsequent act of the legislature, and that if the 1935 amendment is to be construed as the superior court construed it, it is in violation of section 2, article XIV of the constitution of Illinois and the fifth amendment of the Federal constitution and in violation of section 10, article I of that constitution, as an attempt to take away vested rights, to take property without due process of law, and to impair obligations of contracts. The prayer of the bill is, that the Board and its appropriate officers be required to take the necessary action to permit requests for voluntary retirement under the law in force at the time the requests were made for such, and that it take such action as necessary to restore the annuities then in force. The city of Chicago filed a motion to dismiss the complaint on the ground of want of equity. The board of education answered denying the complainant's right to the relief sought. Many teachers and former teachers intervened.

As is stated by counsel for appellants in their reply brief, "Appellants' case rests upon the proposition that they have vested property rights to the payment of future install-

ments of the annuities on the basis fixed by the law in force at the time they retired, or being entitled to retire, made application for retirement." This question will be first considered. They cite DeWolfe v. Bowley, 355 Ill. 530; Porter v. Loehr, 332 Id. 353; Beutel v. Foreman, 288 Id. 106; People v. Abbott, 274 Id. 380; Hughes v. Traeger, 264 Id. 612 and Pennie v. Reis, 132 U. S. 464, 33 L. ed. 426, in support of this claim.

The case of DeWolf v. Bowley, supra, did not involve the question of vested property rights but announced the oft-repeated doctrine under which pensions to retired officers are sustained, i. e., that a public benefit accrues in two ways: by encouraging such officers or employees to remain in the service, and by retiring from public service those who have become incapacitated from performing the duties as well as they might be performed by younger or more vigorous persons. The opinion in that case reviews decisions of this and other courts.

Porter v. Loehr, supra, concerned an amendment to the Police Pension act which increased the pension of retired police officers and applied such increased pensions to those who had retired under the previous act. The act was held unconstitutional for the reason that the increase of pensions to retired policemen did not contemplate the rendition of any additional service by the pensioners and the amount of their pensions was fixed by law when they retired, and had their sole basis in services rendered prior to retirement. This was the ground upon which the invalidity of the act was held, and not, as counsel for appellants argue, because of retroactive application of such amendment.

Beutel v. Foreman, supra, was a mandamus proceeding to compel the Board administering the Police Pension Fund act to grant a pension. Beutel retired after 20 years of

service as a member of the police force and filed an application for pension. About three months after filing this application the act was amended, adding the requirement that the retired officer shall also have reached the age of 50 years. Beutel had not reached that age and the Board denied his petition. The act prior to the amendment of July, 1917, had no 50-year requirement. It was argued that Beutel had a vested right in a pension when on March 31, 1917, he retired and made application for such pension, and that the legislature could not take away that right by subsequent legislation imposing another requirement. It was argued that the amendment was unconstitutional as violating the property right vested in him. It was there held that Beutel enjoyed no right which could not be altered by the legislature.

A right, to be within the protection of the constitution, must be a vested right. It must be something more than a mere expectancy based upon an anticipated continuance of an existing law. If before rights become vested in particular individuals the convenience of the State induces amendment or repeal, such individuals have no cause to complain. (People v. Clark, 283 Ill. 221; I Lewis on Stat. Const. (2nd ed.) sec. 284.) It was held in the Beutel case that municipalities may take away the right to pensions under circumstances shown in that record without affecting the contract right of pensioners or violating the constitution. Counsel for appellants say that the doctrine of the Beutel case is to be applied only to facts on that record, which showed that no right in the retiring officer had become vested, while here the rights of these retired teachers had become vested before the amendment of 1935. We are unable to see the lack of analogy on the facts. In that case Beutel had complied with the statute as it existed at the

time he retired but it was changed before the Board acted on his application for pension. The opinion in that case discusses the authorities fully and need not be re-examined here. We adhere to the holding there made. None of the cases cited by counsel for appellants have modified the principles laid down in the Beutel case. The decisions of this court have uniformly been that pensions are not based on contract but are mere expectancies based upon anticipated continuance of existing law, and that future installments of pensions are not vested property rights. It follows that the State may reduce future installments of pensions without violating the provisions of the State or Federal constitution.

Counsel for appellants argue that if an amendment may not be made retroactive to include increased pensions to those who had retired before such increase was authorized, then by the same token the legislature should not be permitted to reduce pensions by the retroactive application of such amendatory statute, and they call attention to what they deem an analogy in logic between this case and Porter v. Loehr, supra. It will be observed however that the basis of the holding in the Porter case was not that the amendatory act could not be made retroactive, but the reason for the invalidity of that act as applied to Porter was that an increase of pension to those retiring before such increase was authorized was not in contemplation of services to be rendered nor an inducement to continued service but was a gratuity, and so came within constitutional inhibition.

Appellants' counsel also say that Miner v. Stafford, 326 Ill. 204, supports their contention that this act should not be construed to be retroactive in its application. In that case petitioner's husband was killed some six months before an amendment to the Pension act increasing pensions to

widows of policemen who were killed in service was enacted. It was held that her right to a pension was one given by the act as it existed at the time the right to receive a pension accrued and not by the amendment. While the opinion refers to the fact that nothing is said in the amendatory act showing an intention to give it retroactive application, yet the basis of the opinion was that her right to a pension arose before the amendment was enacted. As is pointed out in Porter v. Loehr, supra, to give a pension act of that character retroactive effect would be to violate the constitutional prohibition against donation of public funds for private interests.

In this case the 1935 amendment of the Miller act by specific reference repealed Section 3, which fixed the amount of the retirement annuities, leaving nothing in the act other than the provision for $500 per annum to authorize the payment of those annuities. It would be difficult to conceive of stronger evidence of legislative intent to make the amendment retroactive in its application.

In Hughes v. Traeger, supra, it was held that a change in the disposition of a fund, a portion of which was contributed from public taxation and a portion from the salaries of employees, does not violate any vested right of those interested therein, since such right, until it accrues, is only in the nature of an expectancy created by law and which the law may revoke or destroy. Counsel argue that this case is authority for their claim of vested right because of the language of the opinion, 'Until the happening of the event designated by the statute for its distribution he has no vested right in the fund but only an expectancy created by the law,' and that in this case the happening of the event designated by the statute was the retirement of teachers under the provisions of the Miller act. The doctrine, as we

have seen, is thoroughly established in this State, that the State may control the giving or taking away of pensions, and, in consideration of such expressions as 'happening of contingency,' this doctrine must be borne in mind. If there became due to any of these appellants any installment under the Act prior to the amendment of 1935 which was not paid they would have a cause of action to recover it, for until a statute is amended the processes of the law are afforded those who are beneficiaries under it. It is not intimated in this case that there are any such unpaid installments.

Pennie v. Reis, supra, relied upon by appellants, arose in California. In 1878 a statute was adopted in that State providing that upon death of a police officer after June 1, 1878, there should be paid to his legal representatives, out of a pension fund established by the act, the sum of $1,000. The act required contributions to the fund, and provided that in case a policeman resigned he should be repaid the amounts he had contributed. On March 4, 1889, a new pension law was enacted, providing for the merger of certain pension funds and repealing the statute under the terms of which $1,000 was to be paid to a deceased policeman's estate. This amendment occurred just nine days before the death of the policeman whose representatives were seeking the award. It was contended there, as here, that the Act of 1889 violated constitutional provisions against the impairment of the obligation of contract and destroyed vested rights. It was held that this was not so. The court there said, that 'until the particular event should happen upon which the money or part of it was to be paid there was no vested right in the officer to such payment. His interest in the fund was until then a mere expectancy created by law and liable to be revoked or destroyed by the same authority.'

The difference in nature between a lump sum pension or award and a continued pension is obvious and is sufficient to mark the difference in the rule with reference to interest therein as found in the decisions of the courts. Under a statute such as the one in Pennie v. Reis, supra, where, on the happening of a certain event, a certain sum of money became due, the interest of the beneficiary when such event takes place is analogous to the interest of a pensioner whose installment or pension has become due under the terms of a Pension act. Pennie v. Reis, supra, does not in any way militate against the rule generally adopted, that pension acts do not create in their beneficiaries a vested interest in future installments of the pensions created thereby.

Counsel for appellants seeks to draw a distinction between the payment of a pension and the payment of an annuity as affecting the question of a vested right therein. The Miller act uses the term 'annuity.' Counsel say that even though this court has held that pensioners have no vested right in future installments of pensions, yet there is a sufficient difference between a pension and an annuity to justify their position that appellants have a vested right in such annuity. They say that annuities are in the nature of compensation for services theretofore rendered for which compensation has been withheld. We are unable to see the distinction. The plan of payment is the same, the purposes are evidently the same, and the use of the term 'annuity' instead of 'pension'—which is but an annuity—does not seem to us to result in the distinction for which counsel for appellants contend. Moreover, it may be observed that counsel's contention that these payments are annuities of compensation withheld for services rendered, if of force, would endanger the entire act, since section 19, article IV, of the Constitution prohibits the granting or authorizing of

extra compensation, fee or allowance to any public officer or contractor after service has been rendered or contract made.

Counsel for appellants also argue that under section 4 of the statute on Statutes (Smith Hurd Stat. 1935, chap. 131, sec. 4, p. 3140), the amendment to the Miller act should be construed as retaining provisions for those teachers who retired before the amendment. Section 4 provides that 'no new law shall be construed to repeal a former law, as to * * * any right accrued or claim arising under the former law * * * before the new law takes effect.' This statute can be of no avail unless the right of appellants to this pension is a vested right. In addition, it may be observed that the Miller act of 1935 is a complete act within itself, revising the old Miller act. There is therefore no room for the application of section 4 of the statute on Statutes.

We are of the opinion that the superior court did not err in dismissing appellants' bill. The decree is therefore affirmed.

Decree affirmed."

"UNITED STATES OF AMERICA

STATE OF ILLINOIS, ss.

At a Supreme Court, Begun and held in Springfield, on Tuesday, the First day of June, in the year of our Lord One Thousand Nine Hundred and Thirty-seven, within and for the State of Illinois.

Present—Chief Justice Paul Farthing
Justice Clyde E. Stone
Justice Norman L. Jones
Justice Elwyn R. Shaw
Justice Warren H. Orr
Justice Lott R. Herrick
Justice Francis S. Wilson
Otto Kerner, Attorney General
Warren C. Murray, Marshal
Attest: Adam F. Bloch, Clerk

BE IT REMEMBERED, that afterward, to-wit, on the 11th day of June, 1937, the opinion of the Court was filed in said cause and entered of record in the words and figures following, to-wit:

John E. Groves, et al., Appellants	Error to
No. 23827	
vs.	
Board of Education of the City of Chicago, et al., Appellees	Appeal from Circuit Court Cook

Docket No. 23827—Agenda 57—October, 1936.

John E. Groves et al., Appellants, vs. The Board of Education of Chicago, Appellee.

Mr. Justice ORR delivered the opinion of the court:

The validity of legislation reducing the compulsory retirement age of school teachers and repealing, or changing, other provisions relating to annuities and the voluntary retirement of teachers, is challenged by this appeal. The case comes here from the circuit court of Cook county where an order was entered dismissing counts 1, 2 and 5 of the second amended bill of complaint, for want of equity.

Appellants are retired school teachers between 65 and 70 years of age who were retired by the Chicago board of education on July 24, 1935, pursuant to the provisions of the law commonly referred to as the Miller act, as revised and in force July 12, 1935. They allege that prior to their involuntary retirement they had taught in the public schools of Chicago for many years; that prior to April 20, 1917, pursuant to the statute then in force, teachers, at the beginning of each school year, were required to be elected, annually, for the next ensuing year; that their employment, prior to April 20, 1917, was contractual, and that such contractual relation continued after the 1917 amendment of such statute became effective; that the effect of the 1917 amendment was to make such contracts perpetual; that in and by such contracts of employment, they acquired vested rights that could not be impaired by subsequent acts of the General Assembly (such as the Miller act) or by resolutions of the board of education adopted pursuant to legislative authority or direction.

The facts disclose that there had been for many years a 'teachers' pension and retirement fund,' maintained principally from taxes levied for that purpose, to which all teachers in the Chicago public schools were required to contribute and from which they received a pension or annuity for life, upon retirement. Prior to 1935, this pension statute provided for pensions, upon retirement, of

from $800 to $1000 per annum. This section of the School Law was amended at the 1935 session of the General Assembly, at the same session that the Miller act was amended, increasing the annuity to be paid on retirement, to $1200. Each of appellants is now receiving this amount from this fund.

At the 1925 session of the General Assembly, the Miller act was passed, providing for another and additional pension of $1500 per annum, to be paid entirely out of tax funds, to Chicago school teachers upon their retirement at 70 years of age and over. The Miller act, as originally passed, made no provision whatsoever for the retirement of teachers between the ages of 65 and 70. At the 1927 session of the General Assembly the act was amended by adding section 3 thereto. This section provided for the voluntary retirement of teachers between 65 and 70 years of age, and required the board of education to retire such teachers, upon their request, and to pay teachers retiring at 65 years of age $1000 a year; at 66 years of age $1100 a year; at 67 years of age $1200 a year; at 68 years of age $1300; at 69 years of age $1400, and at 70 years of age $1500 a year. The act provided for their compulsory retirement at the age of 70. The act made no provision whatever for the levy of an additional tax for funds out of which Miller act annuities were to be paid. The board, therefore, was required to pay them out of the existing taxes levied for educational purposes, and the money set aside for current salaries of active teachers was decreased by the amount of such annuities. These annuities or pensions were required to be, and were, paid in addition to the pensions paid out of the teachers' pension and annuity fund. This amendment to the Miller act was approved June 24, 1927. Laws of 1927, p. 792.

At the regular session of the Fifty-ninth General Assembly held in 1935, three companion bills were passed that are involved in the case at bar, two of which appellants contend are unconstitutional and void. The validity of the third bill—which increased the annuity to be paid to teachers from the public school teachers' pension and annuity fund and increased the taxes to be levied for that fund—is not questioned. One of the acts adopted by the Fifty-ninth General Assembly which appellants charge is unconstitutional and void is entitled: 'An act to amend sections 1 and 2 and the title of 'An act to provide for the compulsory and voluntary retirement of teachers, principals, district superintendents, and assistant superintendents, and for the voluntary retirement of superintendents of schools and members of the board of examiners, and for the payment of retirement annuities,' approved May 19, 1926, as subsequently amended, and to repeal section 3 of said act.' (Laws of 1935, p. 1378.) By this amendment the compulsory retirement age of teachers was reduced from 70 to 65 years, and the annuity to be paid pursuant to this act was reduced to $500. Section 3, the section that required the board of education to retire all teachers on their voluntary application at 65 or more years of age and pay them annuities ranging from $1000 to $1500 per annum, was expressly repealed.

The other act which appellants seek to have declared unconstitutional is: 'An act to amend section 138 of 'An act to establish and maintain a system of free schools,' approved and in force June 12, 1909, as amended.' (Laws of 1935, p. 1337.) This act amended section 138 of the School Law by adding the words 'subject to termination by compulsory retirement at the age of 65 years' after the words 'appointments to teachers and principals shall

become permanent.' This act became effective July 12, 1935, during the summer vacation when the public schools were closed. The board thereupon retired the two appellants and all other teachers coming within the purview of the amendments. Each of appellants is now receiving $1700 per annum from these two pensions above referred to. Appellants contend that prior to the adoption of the 'Otis law' amendments (April 20, 1917) they had yearly contracts of employment; that upon the adoption of these amendments such contracts became perpetual; that in addition to this perpetual contract there is a yearly contract; that the adoption by the board of education of the 'annual school budget,' in which appropriations are made for teachers' salaries pursuant to a salary schedule, and by the acceptance of such salaries by appellants and other teachers, a yearly contract of employment was entered into. They contend that they acquired vested rights pursuant to these contracts and that the acts of the Fifty-ninth General Assembly, and of the board of education, violated the obligation of these contracts and deprived them of property without due process of law. They also allege that political and undue influence was used upon the General Assembly which induced it to adopt the amendments complained of, and that the amendments were passed by the members of both houses under duress; and, finally, that the amendments in question were passed by an illegally constituted General Assembly.

In *Dodge* v. *Board of Education,* 364 Ill. 547, we had occasion to consider the same contentions now raised by appellants concerning the Miller act. We there held the amendment of July 12, 1935, was not invalid, since it did not take away any vested rights to future installments for pensions to teachers who had retired, or applied for re-

tirement, under the law in force prior to the amendment. It was there pointed out that future installments of pensions and annuities, payable solely out of funds raised by taxation, where teachers contribute nothing toward the fund, are not vested property rights, but are mere expectancies based upon the anticipated continuance of existing law and not based on contract. Our decision in the *Dodge* case is buttressed by many previous decisions of this court therein referred to, from which it will be seen that the State may reduce or abolish future installments of pensions payable solely out of State or municipal funds, without violating any provisions of the State or Federal constitutions.

The claim of appellants that their tenure of office became a fixed and vested right which neither the State nor the board of education could later deprive them of, by reason of the act of April 20, 1917, commonly known as the Otis law, is likewise untenable. Their contention on this point is almost identical with the position of appellants in the recent case of *Phelps* v. *Board of Education of the Town of West New York* (N. J.) decided on appeal March 1, 1937 (Nos. 454, 455, October Term, 1936) by the United States Supreme Court. There the appellants likewise claimed that by virtue of an act of the legislature of New Jersey adopted in 1909, three years of service under contract conferred upon a school teacher 'a contractual status indefinite in duration which the legislature is powerless to alter or to authorize the board of education to alter.' The Supreme Court of New Jersey, whose judgment on this point was expressly quoted and affirmed by the Supreme Court of the United States, held that the act of 1909 'established a legislative status for teachers, but we fail to see that it established a contractual one that the

legislature may not modify. * * * The status of tenure teachers, while in one sense perhaps contractual, is in essence dependent on a statute, like that of the incumbent of a statutory office, which the legislature at will may abolish, or whose emoluments it may change.' This decision is conclusive on the point raised.

The act amending section 138 of the School Law, and the Miller act of 1935, pertaining to the compulsory retirement of school teachers, are valid, even though the State has not been reapportioned into senatorial districts since 1901. (*Fergus* v. *Kinney*, 333 Ill. 437; *People* v. *Thompson*, 155 *id.* 451.) The length of term and mode of appointments of teachers are under the control and within the power of the legislature. Section 1 of article 8 of our constitution charges the General Assembly with the duty of establishing and maintaing a system of free schools whereby all children of this State may receive a good common school education. The broad power and discretion of the legislature in regulating school affairs has frequently been recognized by this court. (*Keime* v. *Community High School Dist.*, 348 Ill. 228; *People* v. *Kipley*, 171 *id.* 44.) A legislative enactment for retirement of school teachers or other public employees at the age of 65, is not, in itself, an arbitrary or unusual provision. Whether such a law is wise or unwise is a matter with which this court has nothing to do. (*People* v. *Russel*, 294 Ill. 283; *Catholic Bishop* v. *Village of Palos Park*, 286 *id.* 400.) Where an office is created by statute it is wholly within the power of the legislature creating it, and the length of term and mode of appointment may be altered at pleasure or the office may be abolished altogether. *People* v. *McCormick*, 261 Ill. 413; *People* v. *Olson*, 245 *id.* 288; *People* v. *Loeffler*, 175 *id.* 585.

The decree is affirmed.

Decree affirmed."

SUPREME COURT OF THE UNITED STATES.

No. 5.—October Term, 1937.

Chester C. Dodge, et al., Appellants,
vs.
Board of Education of the City of Chicago, et al.
} Appeal from the Supreme Court of the State of Illinois.

[November 8, 1937.]

Mr. Justice Roberts delivered the opinion of the Court.

The appellants challenge an act of Illinois which they assert impairs the obligation of contracts in contravention of Article I, Section 10, of the Constitution of the United States and deprives them of a vested right without due process contrary to the Fourteenth Amendment. The statute decreased the amounts of annuity payments to retired teachers in the public schools of Chicago.[1]

Since 1895 the State has had legislation creating a teachers' pension and retirement fund, originally the fruit of teachers' contributions and gifts or legacies, but later augmented by allotments from interest received and from taxes. With this fund and the benefit payments thereunder we are not concerned.

Prior to 1917 teachers in the Chicago schools were employed for such terms as the Board of Education might fix.[2] In that year an act was passed providing for a probationary period of three years and prohibiting removal thereafter except for cause.[3]

In 1926 an act, known as the "Miller Law",[4] became effective. This provided for compulsory retirement and for the payment of annuities to retired teachers. By Section 1 the Board of Education was directed to retire teachers from active service on February 1 and August 1 of each year according to the following program:

[1] The act embraces teachers, principals, district superintendents, and assistant superintendents, and retired members of those classes are among the appellants. For the sake of brevity all will be denominated teachers.

[2] Act of June 12, 1909, § 133, Laws of 1909, p. 380.

[3] Act of Apr. 20, 1917, §§ 138 and 161, Laws of 1917, pp. 730, 731; Smith-Hurd Ill. Rev. Stats. 1925, Chap. 122, par. 186, § 161.

[4] Cahill's Ill. Rev. Stats. 1927, Chap. 122, par. 269.

In 1926 those seventy-five years of age or over, in 1927 those seventy-four years of age or over, in 1928 those seventy-three years of age or over, in 1929 those seventy-two years of age or over, and in 1930, and in each year thereafter, those seventy years of age or over. Section 2 provided:

"Each person so retired from active service who served in the public schools of such city for twenty or more years prior to such retirement, shall be paid the sum of fifteen hundred dollars ($1,500.00) annually and for life from the date of such retirement from the money derived from the general tax levy for educational purposes:" . . . .

There were two provisos, the one requiring that the annuitant should be subject to call by the superintendent of schools for consultation and advisory service, and the other declaring that the annuity granted by the act was not to be in lieu of, but in addition to, the retirement allowance payable under existing legislation.

In 1927 a third section was added [5] permitting teachers who had served for twenty-five years or more, and were sixty-five years of age or over, who had not reached the age of compulsory retirement, to be retired upon request and to be paid from One thousand dollars to Fifteen hundred dollars per annum depending upon age at retirement.

The appellants fall into three classes: those who were compulsorily retired under the Miller Law; those who voluntarily retired under the law as amended; and those eligible for voluntary retirement who had signified their election to retire prior to July 1935.

July 12, 1935, a further amendment of the Miller Law was adopted [6] requiring the Board presently to retire teachers then in service who were sixty-five years of age or over and in the future to retire teachers as they attained that age. Each person so retired was to be paid Five hundred dollars annually for life from the date of retirement. The provisions that such teachers should hold themselves available for advisory service and consultation and that the annuity payments should be in addition to those made to retired teachers pursuant to other legislation were retained. Section 3 of the Miller Law, permitting voluntary retirement be-

[5] Act of June 24, 1927, Laws of 1927, p. 792; Cahill's Ill. Rev. Stats. 1927, Chap. 122, par. 26 (3).

[6] Act of July 12, 1935, Laws of 1935, p. 1378; Smith-Hurd Ill. Rev. Stats. 1935, Chap. 122, §§ 614a-614e.

tween the ages of sixty-five and seventy, was repealed. As construed by the State Supreme Court, the new law reduced to $500 the annuities of teachers theretofore retired, or eligible for retirement under the Miller Law, as well as those to be retired subsequent to its enactment.

Some of the appellants filed a class bill, in which the others intervened as co-plaintiffs, alleging that their rights to annuities were vested rights of which they could not be deprived; that the Miller Law constituted an offer which each of them had accepted by remaining in service until compulsory retirement or by retiring; that the obligation of the contract had thus been perfected and its attempted impairment by the later enactment was ineffective; and praying that the Board be commanded to rescind action taken pursuant to the Act of 1935 and enjoined from complying with its provisions. The appellee Board of Education filed an answer in which it denied the existence of a contract and asserted that the payments to be made to appellants were pensions, subject to revocation or alteration at the will of the legislature. The appellee City of Chicago filed a motion to dismiss for want of equity. After a hearing, at which testimony was taken on behalf of the appellants, the trial court dismissed the bill.

The Supreme Court of the State affirmed holding that, notwithstanding the payments under the Miller Law are denominated annuities, they cannot be differentiated from similar payments directed by law to be made to other retired civil servants of the State and her municipalities and are in fact pensions or gratuities involving no agreement of the parties and subject to modification or abolition at the pleasure of the legislature.[7]

The parties agree that a state may enter into contracts with citizens, the obligation of which the legislature can not impair by subsequent enactment. They agree that legislation which merely declares a state policy, and directs a subordinate body to carry it into effect, is subject to revision or repeal in the discretion of the legislature. The point of controversy is as to the category into which the Miller Law falls.

In determining whether a law tenders a contract to a citizen it is of first importance to examine the language of the statute. If it provides for the execution of a written contract on behalf of the state the case for an obligation binding upon the state is clear.[8]

---

[7] 364 Ill. 547, 5 N. E. (2d) 84.
[8] *Hall* v. *Wisconsin*, 103 U. S. 5.

Equally clear is the case where a statute confirms a settlement of disputed rights and defines its terms.[9] On the other hand, an act merely fixing salaries of officers creates no contract in their favor and the compensation named may be altered at the will of the legislature.[10] This is true also of an act fixing the term or tenure of a public officer or an employe of a state agency.[11] The presumption is that such a law is not intended to create private contractual or vested rights but merely declares a policy to be pursued until the legislature shall ordain otherwise. He who asserts the creation of a contract with the state in such a case has the burden of overcoming the presumption.[12] If, upon a construction of the statute, it is found that the payments are gratuities, involving no agreement of the parties, the grant of them creates no vested right.[13]

The Supreme Court of Illinois concluded that neither the language of the Miller Law, nor the circumstances of its adoption, evinced an intent on the part of the legislature to create a binding contract with the teachers of the State. While we are required to reach an independent judgment as to the existence and nature of the alleged contract, we give great weight to the views of the highest court of the State touching these matters.[14]

The Miller Law is entitled "An Act to provide for compulsory and voluntary retirement of teachers, . . . and the payment of retirement annuities." The relevant words of Section 1 are: "In every city in this state . . . the board of education of such city shall retire from active service . . . all teachers, [of a given age] . . . ." Section 2 provides: "Each person so retired . . . shall be paid the sum of fifteen hundred dollars ($1,500) annually and for life from the date of such retirement . . . ." Section 3 provides that persons sixty-five years of

---

[9] *New Jersey* v. *Wilson*, 7 Cranch 164; *New Jersey* v. *Yard*, 95 U. S. 104.

[10] *Butler* v. *Pennsylvania*, 10 How. 402; *United States* v. *Fisher*, 109 U. S. 143; *Fisk* v. *Jefferson Police Jury*, 116 U. S. 131, 133; *Robertson* v. *Miller*, 276 U. S. 174, 178.

[11] *Crenshaw* v. *United States*, 134 U. S. 99; *Phelps* v. *Board of Education*, 300 U. S. 319.

[12] *Rector, &c. of Christ Church* v. *County of Philadelphia*, 24 How. 300, 302; *Tucker* v. *Ferguson*, 22 Wall. 527, 575; *New Jersey* v. *Yard*, *supra*; *Newton* v. *Commissioners*, 100 U. S. 548, 561; *Wisconsin & Michigan Ry. Co.* v. *Powers*, 191 U. S. 379, 387.

[13] *Pennie* v. *Reis*, 132 U. S. 604; *Lynch* v. *United States*, 292 U. S. 571, 577, and cases cited.

[14] *Larson* v. *South Dakota*, 278 U. S. 429, 433; *Phelps* v. *Board of Education*, *supra*, and cases cited.

age or over "shall upon their own request be retired . . . and thereafter be paid annuities for life . . . ." Appellants admit that this is not the normal language of a contract but rely on the circumstance that they, as teachers, especially those who voluntarily retired when otherwise they would not have been required so to do, rightly understood the State was pledging its faith that it would not recede from the offer held out to them by the statute as an inducement to become teachers and to retire and that the use of the term "annuities" rather than "pensions" was intended as a further assurance of a vested contractual right. The Supreme Court answered this contention by referring to the fact that for years prior to the adoption of the Miller Law, and by a uniform course of decision, it had held that acts indistinguishable from the Miller Law, establishing similar benefit systems, did not create contracts or vested rights and that the State was free to alter, amend, and repeal such laws even though the effect of its action was to deprive the pensioner or annuitant, for the future, of benefits then enjoyed. The cases to which the court refers so decide.[15] The court further held that the legislature presumably had the doctrine of these cases in mind when it adopted the act now under review and that the appellants should have known that no distinction was intended between the rights conferred on them and those adjudicated under like laws with respect to other retired civil servants. We cannot say that this was error.

The appellants urge that the Miller Law, contrary to most of the acts that preceded it, omitted to use the word "pension" and instead used the word "annuity", a choice of terminology based on contract rather than on gift, and implying a consideration received as well as offered. The State Supreme Court answered the contention by saying:

"We are unable to see the distinction. The plan of payment is the same, the purposes are evidently the same, and the use of

[15] *Eddy* v. *Morgan*, 216 Ill. 437, 449; *Pecoy* v. *Chicago*, 265 Ill. 78-80; *Beutel* v. *Foreman*, 288 Ill. 106. The same principles have been consistently announced since 1926. *People* v. *Retirement Board*, 326 Ill. 579; *People* v. *Hanson*, 330 Ill. 79; *McCann* v. *Retirement Board*, 331 Ill. 193. Appellants urge that the authority of the foregoing cases has been shaken by *Porter* v. *Loehr*, 332 Ill. 353, and *DeWolf* v. *Bowley*, 355 Ill. 530, but these cases did not deal with the question presented in the instant case, and what was said with respect to the nature of pensions was in connection with provisions of the State Constitution.

the term 'annuity' instead of 'pension'—which is but an annuity—does not seem to us to result in the distinction for which counsel for appellants contend."

We are of the same opinion, particularly as an examination of the Illinois statutes indicates that, in acts dealing with the subject, the legislature has apparently used the terms "pensions", "benefits", and "annuities" interchangeably as having the same connotation.[16]

The judgment is affirmed.

[16] In acts creating funds through enforced contributions of state and municipal employes, or out of taxes, or both, the titles and the substantive provisions for benefits to retired employes disclose the use of the terms "pensions" and "annuities" interchangeably to describe the payments to be made from the fund. Act of May 24, 1877, Laws, p. 62; Act of May 10, 1879, Laws, p. 72; Act of May 12, 1905, Laws, p. 309; Act of May 24, 1907, Laws, p. 529; Act of June 14, 1909, Laws, p. 133; Act of June 27, 1913, Laws, p. 598; Act of June 29, 1915, Laws, p. 465; Act of May 27, 1915, Laws, p. 649; Act of June 14, 1917, Laws, p. 748; Act of July 11, 1919, Laws, p. 700; Act of July 11, 1919, Laws, p. 743; Act of June 29, 1921, Laws, p. 203.